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Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*

Summary

The Human Rights Council established the Independent International Fact-Finding Mission on Myanmar in its resolution 34/22. In accordance with its mandate, the Mission focused on the situation in Kachin, Rakhine and Shan States since 2011. It also examined the infringement of fundamental freedoms, including the rights to freedom of expression, assembly and peaceful association, and the question of hate speech.

The Mission established consistent patterns of serious human rights violations and abuses in Kachin, Rakhine and Shan States, in addition to serious violations of international humanitarian law. These are principally committed by the Myanmar security forces, particularly the military. Their operations are based on policies, tactics and conduct that consistently fail to respect international law, including by deliberately targeting civilians. Many violations amount to the gravest crimes under international law. In the light of the pervasive culture of impunity at the domestic level, the mission finds that the impetus for accountability must come from the international community. It makes concrete recommendations to that end, including that named senior generals of the Myanmar military should be investigated and prosecuted in an international criminal tribunal for genocide, crimes against humanity and war crimes.

The present document contains the detailed findings of the Mission. Its principal findings and recommendations are provided in document A/HRC/39/64.

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* The information contained in this document should be read in conjunction with the report of the Independent International Fact-Finding Mission on Myanmar (A/HRC/39/64).

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Acronyms

AA	Arakan Army
ARSA	Arakan Rohingya Salvation Army
ASEAN	Association of Southeast Asian Nations
CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CPED	International Convention for the Protection of All Persons from Enforced Disappearance
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
EAO	Ethnic Armed Organization
FPNCC	Federal Political Negotiation and Consultation Committee
GAD	General Administration Department
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESC	International Covenant on Economic, Social, and Cultural Rights
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International Humanitarian Law
ILO	International Labour Organization
KIA	Kachin Independence Army
LIB	Light Infantry Battalion
LID	Light Infantry Division
MNDAA	Myanmar National Democratic Alliance Army
NLD	National League for Democracy
OHCHR	Office of the United Nations High Commissioner for Human Rights
SGBV	Sexual and Gender Based Violence
SLORC	State Law and Order Restoration Council
SPDC	State Peace and Development Council
SSA-N	Shan State Army North
SSA-S	Shan State Army South
TNLA	Ta'ang National Liberation Army
UDHR	Universal Declaration of Human Rights
UNHCR	Office of the United Nations High Commissioner for Refugees
UNITAR	United Nations Institute for Training and Research
UNOSAT	UNITAR's Operational Satellite Applications Programme
USDP	Union Solidarity and Development Party
UWSA	United Wa State Army
WFP	World Food Programme
MaBaTha	Association for the Protection of Race and Religion
MaHaNa	Sangha Maha Nayaka Committee
NaSaKa	Border Area Immigration Control Headquarters
NaTaLa	Ministry for Development of Border Areas and National Races "model villages"
SaYaPa	Myanmar Intelligence Office

I. Introduction

1. The Independent International Fact-Finding Mission on Myanmar (hereinafter "the Mission") was established by Human Rights Council resolution 34/22, adopted on 24 March 2017. The President of the Council appointed Marzuki Darusman (Indonesia) as chairperson and Radhika Coomaraswamy (Sri Lanka) and Christopher Sidoti (Australia) as members. A secretariat was recruited by the Office of the United Nations High Commissioner for Human Rights (OHCHR). The core team was composed of a coordinator, fact-finding team leader and five human rights officers, legal adviser/reporting officer, military adviser, sexual and gender-based violence adviser, security officer, two language assistants and administrative support.

2. The Mission presented an oral update at the Human Rights Council's thirty-sixth session (19 September 2017) and an oral interim report at the thirty-seventh session (12 March 2018), and delivered a video statement at the twenty-seventh special session of the Council (5 December 2017). In its decision 36/115, the Council requested the Mission to submit its final report at its thirty-ninth session. The main findings and recommendations of the Mission are contained in document A/HRC/39/64. A/HRC/39/CRP.2 contains the full factual and legal analysis, with supporting information, underpinning document A/HRC/39/64. It also includes recommendations directed more broadly than the accountability recommendations in that document.

3. The Mission deeply regrets the lack of cooperation from the Government of Myanmar, despite repeated appeals from the Human Rights Council and the Mission. The Mission requested in-country access through letters of 4 September 2017, 17 November 2017 and 29 January 2018. It sent a detailed list of questions on 27 March 2018. Each time its members travelled to Geneva, the Mission requested a meeting with the Permanent Mission of the Republic of the Union of Myanmar to the United Nations and Other International Organizations in Geneva, Switzerland. The Mission had some limited informal contact with Government representatives but received no official response to its letters requesting formal meetings, in-country access or information. The Mission's draft main findings and recommendations were shared with the Government prior to their submission and public release, providing an opportunity to comment or make factual corrections. No response was received. The Mission's letters to the Government are in annex 2.

II. Mandate, methodology and legal framework

A. Mandate

4. Resolution 34/22 mandated the Mission "to establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, in particular in Rakhine State, including but not limited to arbitrary detention, torture and inhuman treatment, rape and other forms of sexual violence, extrajudicial, summary or arbitrary killings, enforced disappearances, forced displacement and unlawful destruction of property, with a view to ensuring full accountability for perpetrators and justice for victims".

5. In the interpretation of this mandate, the Mission considered the resumption of hostilities in Kachin State and escalation in Shan State in 2011 and the outbreak of major violence in Rakhine State in 2012 as key recent turning points that generated renewed violence and further allegations of serious human rights violations and abuses. The Mission therefore determined that focusing on the situation in Kachin, Rakhine and Shan States since 2011 would allow it to fulfil its mandate in a contextualised manner. The Mission selected several significant incidents for in-depth fact-finding, aiming to make findings on specific allegations of human rights violations and abuses while revealing broader patterns of conduct.

6. The Mission considered that the types of violations and abuses listed in the Council resolution were illustrative, and that it was mandated to consider the full range of violations of international law as appropriate. In line with the Council's request to examine alleged human rights violations and abuses, the Mission decided to examine allegations against both State and non-State actors. Finally, considering the objective of the mandate ("with a view to ensuring full accountability for perpetrators and justice for victims"), the Mission endeavoured to identify perpetrators, as well as to make findings about responsibility and recommendations on accountability.

7. The Mission notes with concern that allegations of human rights violations and abuses occurring in other parts of Myanmar also merit in-depth fact-finding. Time and resource constraints led the Mission to limit itself to Rakhine, Kachin and Shan States, particularly in light of the events that unfolded since August 2017 that required significant attention. The Mission is comfortable, however, that its geographic, temporal and subject matter focus allowed for solid overall findings and recommendations.

B. Methodology

8. The Mission was acutely aware of the complexity and sensitivity of the situation it was mandated to examine, as well as of allegations from all sides that the spread of false information about events has been commonplace. This awareness reinforced its commitment to meticulously follow established methodologies and best practices for human rights fact-finding, as developed by the United Nations. In doing so, the Mission strictly adhered to the principles of "do no harm", independence, impartiality, objectivity, transparency and integrity.

9. In particular, the Mission followed the best practices established for commissions of inquiry and fact-finding missions, outlined in the 2015 OHCHR publication, International Commissions of Inquiry and Fact-Finding Missions on International Human Rights Law and International Humanitarian Law – Guidance and Practice.[1]

1. Standard of proof

10. Consistent with the practice of United Nations fact-finding bodies, the Mission employed the "reasonable grounds" standard in making factual determinations on individual cases, incidents and patterns of conduct. The standard was considered met when a sufficient and reliable body of primary information, consistent with other information, would allow an ordinarily prudent person to reasonably conclude that a case, incident or pattern of conduct occurred. This standard of proof is lower than that required in criminal proceedings.

11. Individual cases or incidents contained in the report are based on at least one credible source of first-hand information, which was independently corroborated by at least one other credible source of information. Specific major incidents, such as those set out in chapter V on Rakhine State, are based on multiple accounts from eyewitnesses and victims, allowing for in-depth fact-finding and detailed event reconstruction. Where the report describes patterns of conduct, these are based on multiple credible sources of first-hand information, which are consistent with and corroborated by the overall body of credible information collected. In the few instances where this standard was not met, but the Mission still considered it appropriate to include the information, this is stated explicitly.

12. In cases of torture or sexual and gender-based violence, where a second independent source of information was often unavailable, the Mission considered the case or incident corroborated when it obtained one first-hand account which it assessed as credible and was consistent with what was known about the incident or the established patterns of similar incidents in the area, and in line with the interviewer's own observations (for example, scars or signs of trauma).

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[1] Available at: https://www.ohchr.org/Documents/Publications/CoI_Guidance_and_Practice.pdf

13. The Mission considered the following to be sources of first-hand information:

- confidential interviews conducted by the Mission or its staff with victims, witnesses, victim's close family members, perpetrators or former Myanmar officials with direct knowledge of the issues brought before the Mission, where it was assessed that the source was credible and reliable;
- satellite imagery from reliable sources, authenticated video and photo material as well as documents containing first-hand information from a reliable source;
- publicly available admissions of relevant facts by Myanmar officials;
- laws, policies and directives of Myanmar as well as internal Myanmar documents, provided that they were received from a credible and reliable source and their authenticity could be confirmed; and
- statistics, surveys and other quantitative information generated by Myanmar or the United Nations, to the extent that the data was based on an apparently sound methodology and the inputs underlying the data were considered originating from a credible and reliable source.

14. The Mission relied on the following types of information to corroborate first-hand information and providing overall context to violations:

- confidential interviews conducted by the Mission or its staff with witnesses who received the information directly from a person known to them (and not as a rumour), provided that the Mission assessed the source to be credible and reliable;
- summaries of witness accounts contained in publications or in submissions from the United Nations, research institutes and human rights organizations, where the Mission assessed the source to be credible and reliable;
- summary descriptions of patterns of conduct contained in expert interviews, public reports, submissions, academic research publications, documentaries and similar materials, where the Mission assessed the source to be credible and reliable.

15. In its assessment of second-hand sources, the Mission endeavoured to interview the researcher or author of the publication, submission or text to assess its credibility and the methodology used.

16. The reliability and credibility of each source was carefully assessed. The Mission considered whether the source was trustworthy, consistently probing the veracity of their statements. Such assessment took into account, among other considerations:

- the witness' political and personal interests, potential biases and past record of reliability, where known;
- the witness' apparent capacity to recall events correctly, considering his or her age, trauma, how far back the events occurred, and so on;
- the position of the witness in relation to the subject of the information;
- where and how the witness obtained the information;
- the reasons for which the witness provided the information.

17. The Mission also considered the information's relevance to the fact-finding work, its internal consistency and coherence, and its consistency with and corroboration by other information, among other factors. Assessment of the validity of the information was separate from the assessment of its reliability and credibility. The Mission did not assume that a credible and reliable source would necessarily provide accurate and valid information.

18. Where this report refers to an account of a witness, the Mission has accepted the statement as assessed and described to be truthful and relevant, unless stated otherwise. Direct references to specific witness statements in the report should not be taken as an indication that it was the sole basis of judgment in relation to the issues under analysis. These direct references and citations were included to provide an example or illustration.

2. Collection of information

19. The Mission obtained a vast quantity of primary and secondary information. It conducted 875 in-depth interviews with victims and eyewitnesses. The Mission took care to diversify its sources of information. It interviewed individuals from different ethnic and religious backgrounds (including Bamar, ethnic Rakhine, Rohingya[2], Kaman Muslims, Hindus and individuals from Kachin and Shan ethnic groups). It also interviewed a number of members of non-State armed groups, as well as some former officials of Myanmar State institutions. Due to the lack of cooperation from the Government of Myanmar, it was unable to interview any serving government officials or members of its military forces.[3]

20. The Mission used various methodological approaches to select persons for interviews. This included random selection, for example by visiting different areas of a refugee camp or different refugee centres without pre-arrangement. Specifically in relation to the situation in Rakhine State, each visit to southern Bangladesh also prioritised interviews with persons who had most recently arrived from Myanmar to ensure the receipt of "fresh" information. Additionally, the Mission targeted interviewees to corroborate specific incidents or patterns. The Mission ensured that it did not rely on any single organization or individual to assist. To the extent possible, the Mission also strove to only speak with persons who had not previously spoken with any other organization or media outlet, and confirmed this ahead of the interview.

21. Nearly 40 per cent of interviewees were female. While the majority of interviews predominantly pertained to the situation in Rakhine State, more than 200 interviews were related to the situation in Kachin and Shan States, with further interviews relating to both situations, or to the country as a whole. Interviews were mostly conducted in person, in a safe and private setting and in the presence of a trusted, professional interpreter where required. Some interviews were conducted remotely, through secure channels of communication and taking additional precautions to ensure reliability (for example, a visual link or a known and trusted intermediary).

22. The Mission obtained a large body of satellite imagery and analysis with the support of UNOSAT[4], and received a vast amount of documents, photographs and videos – some clandestinely recorded or obtained by the source. It only used those materials that it was able to authenticate. All information was checked against secondary information assessed as credible and reliable, including organizations' raw data or notes, expert interviews, submissions and open source material. The Mission's internal expertise included human rights and law, sexual and gender-based violence, psychology and child psychology, military affairs and forensics, and specialist advice was sought in digital verification.

23. To collect information, the Mission members travelled to Bangladesh, Indonesia, Malaysia, Thailand, and the United Kingdom of Great Britain and Northern Ireland. Requests to visit China and India did not receive a response. Mission members visited the refugee camps in Cox's Bazar (Bangladesh) at the start of the mandate, shortly after the arrival of vast numbers of Rohingya refugees, and once again near the end of the mandate in July 2018 to take stock of the situation prior to the finalization of their report to the Human Rights Council. The Mission secretariat undertook numerous additional field-missions between September 2017 and July 2018, of several weeks at a time, primarily to interview victims and witnesses. Specifically in relation to the unfolding events after 25 August 2017 in Rakhine State, a team was deployed immediately to conduct interviews with persons who had just fled Myanmar. The Mission also held over 250 consultations with other stakeholders, including intergovernmental and non-governmental organizations, researchers, and diplomats – in person and remotely. It received written submissions,

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[2] The Mission is conscious of the sensitivity concerning the term "Rohingya" in Myanmar, where the group is generally referred to as "Bengali". The Mission uses the term in line with the concerned group's right to self-identify.

[3] The Mission did, however, undertake an extensive analysis of public statements made by government and military officials.

[4] UNOSAT is the Operational Satellite Applications Programme of the United Nations Institute for Training and Research (UNITAR).

including through a public call. The Mission further engaged with a number of United Nations entities and other humanitarian actors. It is particularly grateful to the Office of the United Nations High Commissioner for Human Rights and to other United Nations officials and entities that provided relevant information and support. It regrets that a number of United Nations entities did not provide similar support.

24. The Mission further regrets that it was not able to visit Myanmar and undertake in-country fact-finding. The Mission was nevertheless able to gather the information necessary to establish facts and draw conclusions in accordance with its mandate. As is apparent from the preceding paragraphs, the Mission accessed a large volume and wide variety of sources, mostly outside but also inside the country. Importantly, it had access to victims and eyewitnesses who left Myanmar throughout the period under review, including very recently. Moreover, considering the severe risk of intimidation and reprisals against individuals who engage with independent human rights bodies (see below) and the restrictions imposed on other international actors operating inside Myanmar, the Mission is convinced that access to the country would not necessarily have generated more reliable or valid information. The Mission is confident that it spoke with victims and witnesses in a safe environment, where they could speak freely and without fear of reprisals.

25. The Mission expresses its deep gratitude for the invaluable support it received from a number of non-governmental organizations and all the persons who agreed to be interviewed. Their dedication to the betterment of the human rights situation in Myanmar is truly admirable.

3. Protection of victims and witnesses

26. The Mission paid specific attention to the protection of victims and witnesses. Its initial protection assessment indicated that persons who speak out about the human rights situation in the country and who engage with United Nations mechanisms have been subject to reprisals. The Mission was therefore extremely cautious in all interactions with victims and witnesses, making constant assessments of the need to establish contact with persons who may be placed at risk as a result. The Mission established strict security protocols to guide these interactions and to ensure that they were conducted through means to mitigate the risks. Contacts were not pursued if the Mission could not ensure the safety of the cooperating person, if the risk of harm was assessed to be too high, or if the Mission did not have sufficient information to make an informed determination on the level of risk. In line with this policy, the Mission has not pursued multiple leads.

27. The most significant challenge for the Mission therefore arose from the fear of reprisals. For the Myanmar population, this fear is well founded. The Mission received information and verified incidents of reprisals against persons who have interacted with international actors. Numerous potential witnesses were afraid to speak with the Mission, even on a confidential basis, because they feared for the repercussions on themselves or family members. The Mission did not pressure anyone to speak with it.

28. Many international actors operating in Myanmar, including aid workers, journalists, diplomats and other foreign visitors to Myanmar, were also unwilling to share knowledge and information with the Mission from fear that this would negatively affect their access if it became known to the Myanmar authorities that they had cooperated with the Mission.

29. The Mission is gravely concerned at the intimidation and threats faced by Myanmar nationals cooperating with Human Rights Council mechanisms mandated to examine the situation in Myanmar. It urges Myanmar to guarantee the protection of victims and witnesses, and everybody who engages with the Mission and with other international human rights mechanisms, and to undertake that no one shall suffer harassment, threats, intimidation, ill-treatment, arrest or other forms of reprisal because of such contact.

4. Storage of information

30. A secure, confidential electronic database was created to enable the Mission to securely record and store information. It contains the summary records of all interviews and meetings conducted as well as electronic copies of relevant materials collected. As a fully

searchable tool, the database facilitated the organization and retrieval of information for analysis and report writing.

31. The Mission systematically sought the informed and specific consent of all interviewees to use and/or share the information given, ensuring confidentiality as appropriate. The consent of every person interviewed and any conditions attached to it were recorded in the database, as were any potential protection risks.

32. The database will be kept as part of the Mission's archives, along with all its physical records and in line with United Nations requirements regarding the archiving of materials. The OHCHR will be the custodian of these archives. It is authorised to provide access to competent authorities carrying out credible investigations to ensure accountability for human rights violations and abuses in Myanmar in line with international norms and standards. Access will be be granted to information only in accordance with the terms of the sources' informed consent and only after any protection concerns are duly addressed.

C. Legal Framework

33. Facts were assessed in light of international human rights law, international humanitarian law and international criminal law, as applicable in Myanmar. The Mission also considered the human rights guarantees under the domestic law of Myanmar.

1. International human rights law

34. Myanmar is bound by the United Nations Charter and the pledge to take action for the achievement of "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".[5] Regardless of the extent to which States have ratified specific human rights treaties, they must respect internationally recognised human rights. Human rights are not limited to citizens of the State, but must be guaranteed to all individuals within the territory or jurisdiction of the State, irrespective of their nationality or lack thereof.[6] The content and scope of Myanmar's international human rights obligations are articulated in treaties ratified by Myanmar, in customary international law and in various instruments of soft law.

(a) Treaty Law

35. As of August 2018, Myanmar has ratified four of the core United Nations human rights treaties: the Convention on the Rights of the Child (CRC) and the Optional Protocol thereto on the sale of children, child prostitution and child pornography (CRC-OP-SC); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of Persons with Disabilities (CRPD); and the International Covenant on Economic, Social and Cultural Rights (ICESC).[7] In doing so, Myanmar consented to be bound by the obligations articulated in these treaties and accepted that domestic laws and practice cannot be invoked to justify a failure to comply.[8] It agreed to engage with the United Nations treaty bodies established to monitor the implementation of

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[5] United Nations Charter, arts. 55(c) and 56.

[6] Only a limited number of rights can be limited to citizens, under strict conditions (see para. 68 below). B. Ramcharan, "The Law-Making Process: From Declaration to Treaty to Custom to Prevention", in *The Oxford Handbook on International Human Rights Law*, D. Shelton ed. (Oxford, Oxford University Press, 2013), p. 511; D. Weissbrodt, *The Human Rights of Non-Citizens* (Oxford, Oxford University Press, 2008). See also A/HRC/19/43, para. 2.

[7] Dates of accession or ratification by Myanmar are: CRC (15 July 1991), CEDAW (22 July 1997), CRPD (7 December 2011), CRC-OP-SC (16 January 2012), ICESC (6 October 2017). Myanmar signed the ICESC on 16 July 2015, meaning that it had to refrain from actions contrary to the object or purpose of the Covenant from that date.

[8] Vienna Convention on the Law of Treaties, art. 27.

the treaties and to duly consider their findings and recommendations. Myanmar has also indicated that it is actively considering acceding to other core human rights treaties.[9]

36. Under the Convention on the Rights of the Child (CRC), Myanmar is obligated to guarantee children, meaning all persons under the age of 18 years, the rights to life, survival, development and preservation of identity; to be registered at birth and to acquire a nationality; to protection from all forms of physical or mental violence, injury and abuse, including sexual abuse; to the highest attainable standard of health; to education; and not to be tortured, sentenced to the death penalty nor suffer other cruel or degrading treatment or punishment.[10] Children also enjoy the rights to freedom of expression, freedom of peaceful assembly and association, and freedom of religion.[11] Children belonging to ethnic, religious or linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language.[12] Under the CRC, governments must do everything they can to protect and care for children affected by armed conflicts.[13] Importantly, the CRC puts States parties under an explicit obligation to respect and ensure these rights to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or their parents' or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.[14]

37. As a party to the Convention on the Elimination of All Forms of Discrimination against Women, Myanmar is committed to undertake measures to end discrimination against women in all forms, including by abolishing discriminatory laws and ensuring the elimination of all acts of discrimination against women by persons, organizations or enterprises. Violence against women and girls, including sexual and gender-based violence, is a form of discrimination prohibited by the Convention and is a violation of human rights.[15] The obligations of States parties do not cease in periods of armed conflict or in states of emergency resulting from political events or natural disasters, and they apply without discrimination to both citizens and non-citizens, including stateless persons.[16] States parties have a due diligence obligation to prevent, investigate, prosecute and punish acts of sexual and gender-based violence.[17]

38. Under the Convention on the Rights of Persons with Disabilities, States parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of

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[9] A/HRC/31/13/Add.1, para. 7. Myanmar has not yet ratified the International Covenant on Civil and Political Rights, and its Second Optional Protocol aiming to the abolition of the death penalty; the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, and its Optional Protocol; the Convention for the Protection of All Persons from Enforced Disappearance; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It has signed, but not yet ratified, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (28 September 2015). Myanmar has also not accepted any of the individual complaints procedures under these conventions.

[10] CRC arts. 1, 4, 6, 7, 19, 24, 28, 34, 37.

[11] CRC, arts. 13-15.

[12] CRC, art. 30.

[13] CRC, art. 38(4).

[14] CRC, art. 2.

[15] United Nations Committee on the Elimination of Discrimination against Women, "*General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*" (CEDAW/C/GC/28), para. 9; "*General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*" (CEDAW/C/GC/30), para. 34; "*General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*" (CEDAW/C/GC/35), para. 21.

[16] United Nations Committee on the Elimination of Discrimination against Women, General Recommendation No. 28, para. 11-12.

[17] E.g. United Nations Committee on the Elimination of Discrimination against Women, General Recommendation No. 30, para. 15, 23.

disability.[18] Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.[19]

39. The International Covenant on Economic, Social and Cultural Rights requires State parties to undertake steps, to the maximum of their available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant. These include the right to work, the right to the enjoyment of just and favourable conditions of work, the right to form trade unions, the right to social security, the right to adequate standard of living including adequate food, clothing and housing, the right to the enjoyment of the highest attainable standard of physical and mental health, the right to education, and the right to take part in cultural life. These rights apply to everyone including non-nationals, such as stateless persons, regardless of legal status and documentation.[20] Complaints of violations should be promptly, impartially, and independently investigated and adjudicated, providing the complainant access to an effective remedy where appropriate.[21] The United Nations Committee on Economic, Social and Cultural Rights further considers that the Covenant requires States parties to adopt an active approach to eliminating systemic discrimination and segregation in practice:

> *Tackling such discrimination will usually require a comprehensive approach with a range of laws, policies and programmes, including temporary special measures. States parties should consider using incentives to encourage public and private actors to change their attitudes and behaviour in relation to individuals and groups of individuals facing systemic discrimination, or penalize them in case of non-compliance. Public leadership and programmes to raise awareness about systemic discrimination and the adoption of strict measures against incitement to discrimination are often necessary. Eliminating systemic discrimination will frequently require devoting greater resources to traditionally neglected groups. Given the persistent hostility towards some groups, particular attention will need to be given to ensuring that laws and policies are implemented by officials and others in practice.*[22]

40. In addition to these four core United Nations human rights treaties, Myanmar is also a party to a number of other international conventions that are relevant to the protection of human rights. They include the Convention on the Prevention and Punishment of the Crime of Genocide (obliging Myanmar to prevent and punish the crime of genocide) and the International Labour Organization Forced Labour Convention, 1930 (No. 29) and Worst Forms of Child Labour Convention, 1999 (No. 182) (obliging Myanmar to suppress the use of forced or compulsory labour in all its forms within the shortest possible period, and to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency).[23]

(b) Customary international human rights law

41. On 10 December 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR), with Myanmar voting in favour. Although the UDHR was not intended at the time to be a legally binding document, it is generally considered as an authoritative interpretation of the human rights provisions in the (binding) United Nations Charter. The UDHR is considered a "common standard of achievement for all peoples and all nations"[24] and it sets out the fundamental human rights that are to be

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[18] CRPD, art. 4.

[19] CRPD, art. 1.

[20] United Nations Committee on Economic, Social and Cultural Rights, *"General Comment No. 20: Non-discrimination in economic, social and cultural rights"* (E/C.12/GC/20), para. 30.

[21] Ibid. para. 40.

[22] Ibid. para. 39.

[23] Dates of accession or ratification by Myanmar are: Genocide Convention (14 March 1956), Forced Labour Convention (4 March 1955), Worst Forms of Child Labour Convention (18 December 2013).

[24] UDHR, Preamble.

universally protected. It is accepted that many of its provisions – if not the entire document – are reflective of customary international law.[25] This means that States are bound by the norms captured in these provisions, regardless of whether they are codified in a binding treaty and ratified by the State concerned.

42. Specific relevant examples of these norms are the right to life[26] and the right to equality and the prohibition of discrimination.[27] The principle of non-discrimination is set out in article 55(c) of the United Nations Charter and further detailed in article 2 of the UDHR. The latter provision states that "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Article 7 of the UDHR further stipulates that "[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law". At its first session, the General Assembly declared that it was in the higher interests of humanity to put an immediate end to religious and racial persecution and discrimination, suggesting these were contrary to the letter and spirit of the Charter.[28] Non-discrimination and equality are also fundamental, crosscutting norms in all major international and regional human rights treaties and texts. The principles of equality and non-discrimination underpin the entire human rights system.

43. Some human rights provisions have not only attained the status of customary international law but are also considered peremptory norms of international law, or *jus cogens*. This means that these norms are accepted and recognized by the international community of States as a whole as a norm from which no derogation or limitation is permitted.[29] While there is no exhaustive list of recognised peremptory norms, it is commonly accepted that these include the prohibitions of the arbitrary deprivation of life, torture, enforced disappearance, slavery and forced labour, prolonged arbitrary detention, systematic racial discrimination and apartheid, genocide, crimes against humanity and war crimes (including hostilities directed at a civilian population).[30]

(c) Other instruments

44. In addition to the human rights norms articulated in treaties, a range of other instruments assist in understanding and delineating human rights obligations of States, even if these texts are not binding as such. These include, for example, the Declaration on the

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[25] See H. Hannum, "The Status of the Universal Declaration of Human Rights in National and International Law", *Georgia Journal of International and Comparative Law*, vol. 25 (1995/6) 287-397; O. De Schutter, *International Human Rights Law*, 2nd ed. (Cambridge, Cambridge University Press, 2014), p. 63 (and references listed there).

[26] N. Rodley, "Integrity of the Person", in *International Human Rights Law* (2nd ed.), D. Moeckli, S. Shah and S. Sivakumaran, eds. (Oxford, Oxford University Press, 2014), p. 185.

[27] At minimum on the grounds of race, religion and sex. See D. Moeckli, "Equality and Non-Discrimination", *International Human Rights Law* (2nd ed.), D. Moeckli, S. Shah and S. Sivakumaran, eds. (Oxford, Oxford University Press, 2014), p. 160-161. The International Court of Justice has described the prohibition on racial and ethnic discrimination as an obligation *erga omnes*: ICJ, Barcelona Traction (Belgium v. Spain), Judgment of 5 February 1970, ICJ Reports 1970.

[28] A/RES/103(I).

[29] Vienna Convention on the Law of Treaties, art. 53.

[30] See N. Rodley, "Integrity of the Person", in *International Human Rights Law* (2nd ed.), D. Moeckli, S. Shah and S. Sivakumaran, eds. (Oxford, Oxford University Press, 2014), p. 185; ICJ, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*, Judgment of 20 July 2012, ICJ Reports 2012, para. 99; J. Sarkin, "Why the Prohibition of Enforced Disappearance Has Attained Jus Cogens Status in International Law", *Nordic Journal of International Law*, Vol. 81(4), 2012, pp. 537-584; International Law Commission, "Report of the Study Group on Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law" A/CN.4/L.682 (13 April 2006), para. 374; E. De Wet, "Jus Cogens and Obligations Erga Omnes", in *The Oxford Handbook on International Human Rights Law*, Dinah Shelton ed. (Oxford, Oxford University Press, 2013), pp. 543-547; M.C. Bassiouni, "International Crimes: Jus cogens and obligatio erga omnes", *Law and Contemporary Problems*, vol. 59(4), 1996, p. 68.

Protection of Persons from Enforced Disappearances[31], the Guiding Principles on Internal Displacement[32], the Standard Minimum Rules for the Treatment of Prisoners[33], the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment[34], the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity[35], and the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.[36] In November 2012, the members of the Association of Southeast Asian Nations (ASEAN), including Myanmar, unanimously adopted the ASEAN Declaration on Human Rights. Despite the controversy surrounding its drafting process and the narrow formulation of some of its provisions in comparison with international norms and standards[37], it remains a useful instrument to further delineate the human rights obligations that ASEAN member States themselves accept as binding on them.

45. The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities is one of the main reference documents for minority rights.[38] It recognises that persons belonging to minorities have the right to the protection by states of their existence and their national or ethnic, cultural, religious and linguistic identity (art. 1), the right to enjoy their own culture, to profess and practise their own religion, and to use their own language in private and in public (art. 2.1), the right to participate effectively in cultural, religious, social, economic and public life (art. 2.2), the right to participate effectively in decisions which affect them on the national and regional levels (art. 2.3), the right to establish and maintain their own associations (art. 2.4), and the freedom to exercise their rights, individually as well as in community with other members of their group, without discrimination (art. 3). States are also to protect and promote the rights of persons belonging to minorities by taking measures to ensure that they may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law (art. 4.1). In its 2005 Commentary, the United Nations Working Group on Minorities observed that "minority protection is based on four requirements: protection of the existence, non-exclusion, non-discrimination and non-assimilation of the groups concerned".[39]

46. The 1979 United Nations Code of Conduct for Law Enforcement Officials and the 1990 Basic Principles on the Use of Force and Firearms for Law Enforcement Officials provide guidance to States on the use of force and firearms by any law enforcement official.[40] The Code of Conduct stipulates in article 3 that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of

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[31] Declaration on the Protection of Persons from Enforced Disappearances, adopted by General Assembly resolution 47/133, 18 December 1992.

[32] Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2).

[33] The United Nations Standard Minimum Rules for the Treatment of Prisoners were initially adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and approved by the United Nations Economic and Social Council in 1957. On 17 December 2015, a revised version was adopted unanimously by the General Assembly (A/RES/70/175).

[34] Adopted by General Assembly resolution 43/173 of 9 December 1988.

[35] Recognised in a consensus resolution of the United Nations Commission on Human Rights in 2005 (E/CN.4/2005/102/Add.1).

[36] Adopted by General Assembly resolution 60/147 of 16 December 2005.

[37] See e.g. M. Davies, "An Agreement to Disagree: The ASEAN Human Rights Declaration and the Absence of Regional Identity in Southeast Asia", *Journal of Current Southeast Asian Affairs*, vol. 33(3), 2014, 107-129; A. Bloed and N. Girard, "ASEAN – Background and Human Rights Mechanisms", in *The United Nations Declaration on Minorities – an Academic Account on the Occasion of its 20th Anniversary (1992-2012)*, U. Caruso and R. Hofmann, eds. (Leiden, Brill/Nijhoff, 2015), pp. 311-313.

[38] Adopted by General Assembly resolution 47/135 (18 December 1992).

[39] E/CN.4/Sub.2/AC.5/2005/2, para. 23.

[40] The Code of Conduct was adopted by the General Assembly in 1979, and the Basic Principles were adopted at the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990. On 18 December 1990, the United Nations General Assembly adopted resolution 45/166 welcoming the Principles and inviting States to respect them.

their duty. The Basic Principles set out the core parameters to determine the lawfulness of use of force by law enforcement personnel and establish standards for accountability and review. Any use of force by law enforcement officials should be in accordance with the principles of legality, necessity, proportionality, non-discrimination, precaution, and accountability. These instruments, and in particular the provisions regarding the use of force in relation to the right to life and physical integrity, are generally considered authoritative.[41] States must investigate the use of lethal force by their agents.[42]

(d) Responsibility

47. States are the primary duty holders of international human rights obligations, whether assumed through ratification of human rights treaties or acquired by virtue of applicable international customary law. States can be held responsible for human rights violations committed by their organs (for example, legislative or executive branch) or by their agents (for example, civil servants, the police, the army).[43] States have the duty to respect, protect and fulfil human rights. The duty to *respect* means that States themselves must refrain from interfering with or curtailing the enjoyment of human rights, including through their servants or agents. Under the duty to *protect*, States must actively ensure that persons within their jurisdiction do not suffer from human rights abuse committed by others. The obligation to *fulfil* means that States must take action to facilitate and enhance the enjoyment of human rights. This has been understood to include not only the adoption of appropriate laws, but also "judicial, administrative and educative and other appropriate measures".[44]

48. Inherent in these duties is a State's obligation to ensure that individuals have accessible and effective remedies.[45] States have a duty to investigate and prosecute gross violations of international human rights law and serious violations of international humanitarian law, in particular those that amount to crimes under international law (in particular war crimes, crimes against humanity and genocide), and to provide an effective remedy. States' investigations into allegations must be carried out by independent and impartial bodies and be prompt, thorough and effective.[46]

49. The Mission concurs with the view that, in addition to the State, some non-State actors have human rights obligations under customary international law, in particular when they exercise effective control over territory and carry out government-like functions. They are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control.[47] This is particularly so for peremptory norms of international law.

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[41] See OHCHR and United Nations Office on Drugs and Crime, "Resource book on the use of force and firearms in law enforcement" (New York, United Nations, 2017), p. 7 and references there.

[42] See e.g. the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted on 24 May 1989 by the Economic and Social Council Resolution 1989/65, paras. 9, 10, 17.

[43] See chapter IX, Responsibility.

[44] For an overview of these concepts, see F. Mégret, "Nature of Obligations", in *International Human Rights Law* (2nd ed.), D. Moeckli, S. Shah and S. Sivakumaran, eds. (Oxford, Oxford University Press, 2014), p. 102-103.

[45] B. Ramcharan, "The Law-Making Process: From Declaration to Treaty to Custom to Prevention", in *The Oxford Handbook on International Human Rights Law*, D. Shelton ed. (Oxford, Oxford University Press, 2013), p. 512.

[46] See chapter X, Impunity and accountability.

[47] E.g. A/HRC/8/17, para. 9; A/HRC/10/22, para. 22; A/HRC/12/48, para. 305. See also e.g. United Nations Committee on the Elimination of Discrimination against Women, "*General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*" (CEDAW/C/GC/28), para. 11: "Under international human rights law, although non-State actors cannot become parties to the Convention, the Committee notes that, under certain circumstances, in particular where an armed group with an identifiable political structure exercises significant control over territory and population, non-State actors are obliged to respect international human rights."

2. International humanitarian law

50. International humanitarian law is the body of law that regulates the conduct of parties to an armed conflict. In situations of armed conflict, it applies concurrently with international human rights law. Several non-international armed conflicts existed in Myanmar during the period under review.

51. A non-international armed conflict exists "whenever there is protracted armed violence between governmental authorities and organized armed groups or between such groups within a State".[48] This definition is widely accepted and is understood to encompass two cumulative criteria, which distinguish a non-international armed conflict from internal tensions or disturbances: the intensity of the armed violence and the level of organization of the armed group(s) involved. Assessing whether these criteria are met in a particular situation is a factual matter to be decided on a case-by-case basis. In their jurisprudence, the United Nations *ad hoc* international tribunals have, for each of the two criteria, articulated a number of indicators.[49]

(a) Kachin and Shan States

52. The Mission is satisfied that these two criteria are fulfilled for the conflicts between the Government forces, on the one hand, and the Kachin Independence Army (KIA), the Shan State Army – South (SSA-S),[50] the Shan State Army – North (SSA-N),[51] the Ta'ang National Liberation Army (TNLA),[52] the Arakan Army (AA), and the Myanmar National Democratic Alliance Army (MNDAA), on the other hand. This was the case for the period under review in this report.

53. These non-State armed groups, in Myanmar referred to as "ethnic armed organizations",[53] are long-established and, although they each have their own characteristics, they all have a clear leadership and command structure; headquarters; regular recruitment efforts and training; uniforms; a demonstrated ability to procure arms; an ability to plan, coordinate and carry out military operations (jointly[54] or separately); and an ability to exercise some level of territorial control in their respective operational areas. These elements all confirm a level of organization sufficient to consider them party to an armed conflict. The hostilities between each of these groups and the Government forces

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[48] ICTY, *Prosecutor v Tadic*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 70.

[49] Indicators relevant to an assessment of the *intensity of violence* include, for example, the number of incidents and the level, length and duration of the violence; the deaths, injuries, and damage caused by the violence; the geographical spread of the violence; the mobilization of individuals and the distribution of weapons to them; the weapons used by the parties; the conclusion of ceasefire and peace agreements; and the involvement of third parties, whether the UN Security Council or other outside entities. indicators that may assist in assessing the requisite *level of organization* of the armed group have been grouped into those that indicate a command structure; that suggest that the group can carry out organized military operations; that indicate logistical ability; that relate to the implementation of obligations of international humanitarian law; and that demonstrate the ability to speak with a unified voice.[49] Specific indicators include the existence of an official command structure; headquarters; uniforms; discrete roles and responsibilities of differing entities; the modes of communication used; whether military training is afforded to members of the group; external relations such as negotiations with third parties; the ability to operate within designated zones; control of territory; procure, transport and distribute arms; recruit new members; ability to co-ordinate actions; and the existence of internal regulations and disciplinary procedures. See S. Sivukumaran, "The Law of Non-International Armed Conflict" (Oxford, Oxford University Press, 2012), pp. 167-172.

[50] Armed wing of the Restoration Council of Shan State (RCSS).

[51] Armed wing of the Shan State Progressive Party (SSPP).

[52] Armed wing of the Palaung State Liberation Front (PSLF).

[53] This report uses the term "ethnic armed organization" when referring to non-State armed groups operating in northern Myanmar (Kachin and Shan States) in opposition to the Government. The term "non-State armed group" ordinarily refers to such organizations, as well as other armed actors operating in these and other states (e.g. militia groups, or ARSA in Rakhine State).

[54] E.g. the KIA, AA, TNLA and MNDAA have formed the "Northern Alliance", which has engaged in joint operations against the Myanmar military.

have also reached the required level of intensity: clashes have occurred at regular intervals over a long period of time; have involved the use of heavy weaponry and landmines, as well as military aircraft, attack helicopters and heavy artillery; are often marked by extensive destruction of property and displacement, resulting in casualties; and lead to shifting frontlines and control over territory.

54. The Mission is also satisfied that the violence between the SSA-S/RCSS and the TNLA amounts to a separate non-international armed conflict, since at least November 2015.

(b) Rakhine State

55. A more difficult question was whether the violence in Rakhine State, involving the Arakan Rohingya Salvation Army (ARSA)[55] and the Myanmar government forces, amounted to a non-international armed conflict at any point in time. ARSA is commonly regarded as a poorly armed and poorly trained group, with a small number of partly trained members but principally relying on untrained villagers to conduct attacks with sticks and knives. In comparison with the long-standing and well-armed non-State armed groups active in northern Myanmar, ARSA's level of organization and military capacity appears more limited.

56. However, the situation must be assessed on the facts, based on the information that emerged during the Mission's fact-finding work.[56] The Mission considered the following elements as pointing at a certain level of organization within ARSA: a command structure allowing instructions to pass from decision makers to members and supporters at ground level, who complied with them; an ability to coordinate between an operational group in Rakhine State and groups based abroad; an ability to stage coordinated or simultaneous attacks across different locations in a tightly-controlled environment; an ability to mobilise widely among the Rohingya community at the time of attacks; the organization of village cells according to different roles and responsibilities; an ability to provide at least a core group of members with some military training and others with basic defence training, albeit limited; an ability to obtain some firearms and produce some improvised explosive devices and other hand-made weapons; an ability to articulate and communicate its positions and demands in a seemingly unified manner; and at least a stated willingness to abide by international law. On the other hand, the Mission also found elements that point towards the opposite view, chiefly ARSA's apparent inability to raise significant funds and to procure and distribute firearms or other weaponry, and an overwhelming majority of those who participated in the attacks not having had any meaningful military training.

57. On balance, considering that international jurisprudence and legal scholarship emphasize that "some degree of organization will suffice" and that the requisite level of organization "should not be exaggerated",[57] the Mission considered that ARSA meets the requisite threshold of organization. The main factor that swayed the Mission was ARSA's ability to stage up to 30 coordinated attacks on Government security posts in August 2017 (although some of these attacks were very limited in scale) in a tightly controlled environment and despite the earlier "clearance operations" of the Myanmar security operations following the October 2016 ARSA attacks.

58. The second criterion, the intensity of the violence, cannot be in doubt, especially since August 2017. The number of incidents, the geographic spread of the violence, the military equipment and weaponry brought in and used during the operations, the duration of the security operations, the number of casualties and injuries, and the extent of the destruction caused, are of a nature and scale that cannot be regarded as a mere internal disturbance. The question of whether the use of such tactics by the Myanmar security forces

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[55] The name "ARSA" came into existence only later, but is used for ease of reference.

[56] See chapter V, section D.1.c. Arakan Rohingya Salvation Army, for a full overview of ARSA based on the information obtained by the Mission.

[57] See S. Sivukumaran, "The Law of Non-International Armed Conflict" (Oxford, Oxford University Press, 2012), p. 170 and the references listed there. E.g. ICTY, *Prosecutor v Limaj et al.*, IT-03-66-T, Judgment, 30 November 2005, para. 89.

was warranted, appropriate and commensurate with the threat faced is valid, and will be discussed in this report, but has no bearing on the factual determination of the intensity of the violence itself. In this regard, the Mission also notes that ARSA was involved in multiple attacks on Myanmar security posts, as well as in the killing of informants and the burning of at least one village.[58]

59. The Mission therefore has reasonable grounds to consider that the conflict between the Myanmar government forces and ARSA amounts to a non-international armed conflict at least since 25 August 2017.[59] The Mission consequently examined the use of force in the context of the August 2017 attacks and the resulting allegations of human rights violations and abuses in light not only of the relevant rules of international human rights law but also of international humanitarian law.

(c) Applicable rules of international humanitarian law

60. Myanmar is a party to the four Geneva Conventions of 12 August 1949.[60] It is also a party to the 1972 Convention on the Prohibition of Biological Weapons[61], the 1993 Convention prohibiting Chemical Weapons[62], as well as to the Hague Convention and Protocol for the Protection of Cultural Property.[63] Additionally, all parties to non-international armed conflicts in Myanmar are bound by the relevant rules of customary international law applicable in such conflicts.

61. Of particular relevance is common article 3 of the Geneva Conventions. This article contains protections for civilians and other persons not taking direct part in hostilities. It obliges all parties to respect, as a minimum, that persons taking no active part in hostilities shall be treated humanely, without any adverse distinction. It prohibits violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, taking of hostages, outrages upon personal dignity as well as the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, respecting the generally recognized principles of fair trial and due process. Furthermore, parties to armed conflicts must, at all times, abide by the principles of distinction, proportionality and precautions in attack.[64] This means that parties must distinguish between civilian persons and objects, on the one hand, and lawful military targets, on the other.[65] Attacks are prohibited where they are expected to cause incidental loss of life, injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.[66] Parties must also take all feasible precautionary measures to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.[67]

62. Myanmar is responsible for all violations of international humanitarian law committed by its armed forces or those acting under its direction or control.[68]

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[58] See chapter V, section D.1.c. Arakan Rohingya Salvation Army.

[59] The Mission notes that this conclusion is in line with public statements made by the International Committee of the Red Cross. See e.g. "Rakhine: Returns must be safe, dignified and voluntary - Speech by the ICRC President at the Shangri-La Dialogue", Singapore, 2 June 2018.

[60] Since 25 August 1992. Myanmar has not ratified the Additional Protocols I and II to the Geneva Conventions.

[61] Since 1 December 2014.

[62] Since 8 July 2015.

[63] Since 10 February 1956.

[64] See J.M. Henckaerts and L. Doswald-Beck, "Customary International Humanitarian Law: Volume I: Rules" (Cambridge, ICRC/Cambridge University Press, 2005), rules 1-24. (hereafter ICRC/Customary IHL").

[65] Ibid. rule 7.

[66] Ibid. rule 14.

[67] Ibid. rules 15-24.

[68] Ibid. rule. 149; International Law Commission Articles on State Responsibility (General Assembly resolution 56/83), art. 8.

3. International criminal law

63. In its efforts to appropriately characterize the human rights violations and abuses it established, the Mission has had regard to international criminal law. This body of law governs the situations in which individuals can be held individually criminally responsible for gross violations of international human rights law and serious violations of international humanitarian law that amount to crimes under international law. The principal crimes considered by the Mission were genocide, crimes against humanity and war crimes. In doing so, the Mission referred to the definitions of these crimes in the Convention on the Prevention and Punishment of the Crime of Genocide, the Rome Statute of the International Criminal Court and customary international law, as well as the interpretation of these definitions in the jurisprudence of international courts and tribunals.[69]

64. As mentioned above, the prohibitions of genocide, crimes against humanity and war crimes amount to peremptory norms of international law (*jus cogens*), meaning that no derogation from the rule is allowed. The recognition of a crime under international law as *jus cogens* gives rise to a duty of the State to prosecute and punish perpetrators, the non-applicability of statutes of limitation for such crimes, and the universality of jurisdiction over such crimes regardless of where they were committed, by whom, or against whom.[70] Moreover, under various sources of international law and under United Nations policy, amnesties are impermissible if they prevent prosecution of individuals who may be criminally responsible for war crimes, genocide, crimes against humanity or other gross violations of human rights.[71]

4. Domestic law

65. Where relevant, the Mission also considered human rights guarantees under Myanmar's domestic law, in particular the 2008 Constitution and the Penal Code, and the extent to which these are in line with international human rights norms and standards.

(a) Constitutions of the Union of the Republic of Myanmar of 2008

66. The 2008 Constitution of Myanmar, in its Chapter VIII ("Citizen, Fundamental Rights and Duties of the Citizens"), guarantees a number of human rights, including the right to equality and non-discrimination, the right to life, freedom of expression, freedom of peaceful assembly, freedom of association, freedom of movement, the right to privacy, the right to education, the right to health care, and the prohibition of slavery and forced labour. These constitutional human rights provisions are problematic for at least two reasons: most are reserved for "citizens" only, and several are accompanied by broad and often impermissible qualifications or limitations. In addition some fundamental human rights are absent from the list (for example, the prohibition of torture).

67. Section 21 of the Constitution provides that "every citizen" shall enjoy the rights to equality, liberty and justice. Section 348 further elaborates that the Union "shall not discriminate any citizen of the Republic of the Union of Myanmar based on race, birth, religion, official position, status, culture, sex and wealth". Other examples of rights limited to "citizens" are the rights to freedom of religion, freedom of expression, freedom of peaceful assembly and association, freedom of movement, privacy, education and health care.[72] In light of the arbitrary deprivation of nationality of a large segment of the population (in particular the Rohingya), resulting in their *de facto* statelessness,[73] these

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[69] See chapter VIII. Crimes under international law.

[70] E.g. M.C. Bassiouni, "International Crimes: Jus cogens and obligatio erga omnes", *Law and Contemporary Problems*, vol. 59(4), 1996, p. 66.

[71] See e.g. OHCHR, *Rule-of-Law Tools for Post-Conflict States: Amnesties* (New York and Geneva, United Nations, 2009), p. 11.

[72] Constitution of Myanmar, sections 34, 354, 355, 357, 366 and 367.

[73] See chapter V, section B.1. Denial of legal status and identity.

constitutional provisions exclude large segments of the population from basic human rights protection.[74]

68. The Mission recalls that every person, by virtue of their humanity, is entitled to enjoy all human rights. Under international human rights law, the State is – as a matter of principle – under an obligation to respect, protect and fulfil the human rights of all persons within its territory or under its jurisdiction, without discrimination. Distinctions between citizens and non-citizens can only be made if they serve a legitimate State objective and are proportional to the achievement of that objective.[75] States may, for example, narrowly draw a distinction with respect to political rights (such as the right to vote or stand for election) and freedom of movement (limited to those who are "lawfully within the territory of a State").[76] Any other distinction between citizens and non-citizens is in violation of international human rights law.[77] Importantly, any limitation to the enjoyment of human rights to nationals must meet stringent conditions to comply with the principle of non-discrimination.[78] The denial of human rights cannot be based on an arbitrary deprivation of nationality.

69. Second, the Constitution of Myanmar includes significant limitations on several fundamental rights, often on vague or impermissible grounds. Section 34, for example, provides for the freedom of religion for every "citizen" (freedom of conscience and the right to freely profess and practise religion), but subjects this to "public order, morality or health and to the other provisions of this Constitution". Section 360(b) then expressly states that the freedom of religious practice shall not prevent the State from "enacting law for the purpose of public welfare and reform". Similarly, the freedoms of expression, peaceful assembly and association are guaranteed for every "citizen" but only if "not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality"[79] and artistic expression is guaranteed if "not detrimental to national solidarity".[80] Whereas international human rights law permits limitations on certain human rights, they must be determined by law, be necessary in a democratic society and meet the strict tests of necessity and proportionality. Broad and vague terms such as "public welfare and reform", "tranquillity" and "solidarity" open the door for abuse.

(b) Penal Code

70. Myanmar's Penal Code criminalizes certain acts that could constitute violations or abuses of human rights. Such provisions include those concerning homicide and murder (section 299 and following), torture (section 330-331), rape (section 375 and following), kidnapping, abduction, slavery, and forced labour (section 359 and following), and the defiling of places of worship (section 299 and following). However, the Penal Code dates from 1891 and has seen minimal amendments since then. Several of its provisions are too narrow and inconsistent with international norms and standards[81], and others are too broad and used oppressively.

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[74] Note, however, section 347 of the Constitution, which provides that the Union "shall guarantee *any person* to enjoy equal rights before the law and shall equally provide legal protection", which appears in contradiction with the provisions limiting certain rights to *citizens* (emphasis added).

[75] D. Weissbrodt, *The Human Rights of Non-Citizens* (Oxford, Oxford University Press, 2008), p. 45 (and references there); OHCHR, *The Rights of Non-Citizens* (New York and Geneva, United Nations, 2006), p. 7.

[76] See ICCPR, arts. 12(1) and 25.

[77] See also A/HRC/19/43 and E/CN.4/Sub.2/2003/23

[78] See A/HRC/19/43, para. 4; United Nations Human Rights Committee, *"CCPR General Comment No. 15: The Position of Aliens Under the Covenant"*, paras. 2 and 7.

[79] Constitution of Myanmar, Section 354.

[80] Constitution of Myanmar, Section 365.

[81] E.g. on rape/sexual violence and on torture and ill-treatment. See Chapter X Impunity and accountability.

III. Context

A. Military domination in politics

1. History of military rule

71. Myanmar's political history has been heavily dominated by an all-powerful military, known as the Myanmar "Tatmadaw", which has ruled the country for most of its existence. Myanmar (then still Burma) was already under heavy military influence during the 1950s but it was a parliamentary democracy until the military coup of General Ne Win in 1962. General Ne Win argued that a military take-over was necessary to protect the territorial integrity of the country. Insurgencies from "ethnic armed organizations"[82] had flared soon after independence and were "in protest against the centralising and Burmanising tendencies of the Union government, the heavy-handedness of the army, and Prime Minister U Nu's persistent promotion of Buddhism as the state religion".[83] The Tatmadaw has used the alleged "ethnic" threat to national sovereignty and territorial integrity as the excuse for its control of the country ever since.

72. When the "Union Revolutionary Council", chaired by Ne Win, took power, it was solely comprised of members of the armed forces and sought to transform Myanmar into a self-sustaining socialist state. It suspended the 1947 Constitution. The regime placed significant restrictions on political and union activities, suppressing demonstrations through military force and arresting political opponents. It also used military force to attempt to suppress "ethnic" insurgencies.

73. By 1988, there was increasing resentment towards Ne Win's regime, exacerbated by widespread human rights violations, high levels of corruption and economic mismanagement. Widespread anti-regime protests took place between March and September 1988, predominantly led by students calling for an end to one-party rule. Military force was used to suppress the demonstrations throughout Myanmar, resulting in thousands of deaths. Ultimately, these protests led Ne Win to resign as leader of the Burma Socialist Programme Party, the Tatmadaw's vehicle for governing, on 23 July 1988. The sitting President, San Yu, also resigned. A general strike across much of Burma, beginning on 8 August 1988, was accompanied by further significant protests attended by hundreds of thousands of people. This became known as the 8888 Uprising. Riot police fired upon protestors, killing and wounding thousands. On 18 September 1988, the military, under the command of General Saw Maung, replaced the old military regime with a new one. It established the State Law and Order Restoration Council (SLORC) and seized control of government operations.[84]

74. With a view to establishing a multi-party system, the SLORC briefly allowed the registration of political parties. Parties registering included the National League for Democracy (NLD), headed by Daw Aung San Suu Kyi, the daughter of Major General Aung San, the Burmese independence leader and founder of the Tatmadaw, who was assassinated in 1947, shortly before independence. Daw Aung San Suu Kyi had come to prominence during the 8888 Uprising. However, in 1989, the authorities placed her under house arrest. In the general election of 27 May 1990, the NLD won 60 per cent of the popular vote and, under the electoral system in place, 80 per cent of parliamentary seats.[85]

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[82] "Ethnic armed organizations" is a term used in Myanmar to refer to non-State armed groups operating predominantly in northern and eastern Myanmar that maintain political opposition to the State. For example, the Nationwide Ceasefire Agreement of 2015 is "between the Government of the Republic of the Union of Myanmar and the ethnic armed organizations". This report will use the term as such.

[83] D.C. Williams, "A second Panglong Agreement: Burmese Federalism for the Twenty–first Century" in *Constitutionalism and Legal Change in Myanmar*, A. Harding, K.K. Oo, eds. (Oxford and Portland, Hart Publishing, 2017), p. 61

[84] D. Steinberg, *Myanmar: The Anomalies Of Politics And Economics*, The Asia Foundation Working Paper Series - Working Paper #5 (1997).

[85] J. Badgley and I. Holliday, "Democracy" in *Routledge Handbook of Contemporary Myanmar*, A. Simpson, N. Farrelly, I. Holliday eds. (London and New York, Routledge, 2018), p. 38.

The SLORC refused to recognise the result and maintained governmental control, refusing to allow the legislature to assemble. Those who had been elected to parliament either were arrested and imprisoned or fled. The 1990s remained a period of tight military control where political dissent was stifled. Throughout the 1990s, Western nations imposed increasingly strong sanctions against Myanmar. In 1997, the military junta changed its name from SLORC to State Peace and Development Council (SPDC).

75. Following a sharp rise in the cost of basic commodities, at the end of 2006, and the removal of oil and gas subsidies in August 2007, widespread protests occurred in urban areas throughout Myanmar.[86] Buddhist monks played a prominent role, leading to international media referring to the protests as the "Saffron Revolution". The SPDC used lethal force to disperse the largely peaceful protests, garnering international condemnation.[87]

76. In February 2008, the Government published a proposed new Constitution and announced that it would be subject to a referendum on 10 May 2008. The process had begun in 2004 after a national convention was convened to work on a draft under Prime Minister General Khin Nyunt's "Roadmap to Democracy". Daw Aung San Suu Kyi remained under house arrest and the NLD refused to participate in the national convention. Days before the referendum on the draft, on 2 May 2008, Cyclone Nargis made landfall in Myanmar, causing significant destruction in the Ayeyarwady Region and killing an estimated 138,000 people. The SPDC went ahead with the referendum nonetheless and claimed that more than 90 per cent of the voters had approved the draft constitution.[88] A key point of contention concerning the draft was the continued role of the military in the political process. The draft also provided that the President of Myanmar could not be the spouse or parent of a foreign national, a provision designed to exclude Daw Aung Sang Suu Kyi. The NLD alleged that State authorities had frustrated their efforts to campaign against the draft constitution. It rejected the alleged results, noting significant voting irregularities.[89]

77. The military-backed Union Solidarity and Development Party (USDP) won the 2010 general election, which was boycotted by the NLD and other pro-democracy parties, objecting to what were perceived as unfair electoral laws. Retired General Thein Sein, the leader of the USDP, became President, taking over from Than Shwe who had led the junta since 1992.

78. At the national level, the Thein Sein Government implemented a number of important reforms, including freeing most political prisoners, relaxing censorship and restrictions on the media, and permitting greater political and labour union activity, including in relation to freedom of assembly and of association. NLD leader Aung San Suu Kyi was released from house arrest shortly after the 2010 elections. After negotiations between President Thein Sein and Daw Aung San Suu Kyi, the NLD contested parliamentary by-elections and won parliamentary seats in April 2012. Daw Aung San Suu Kyi entered parliament as leader of the new NLD group. As a result of the liberalisation, 2011 and 2012 also saw the relaxation of sanctions by Western States and increased foreign investment. In 2014, efforts to amend the constitution to allow Daw Suu to become President and to reduce the role of the military in governing the country were unsuccessful.

79. The significant increase in foreign investment, which more than tripled from USD 901 million in 2010 to USD 3.2 billion in 2016[90], and the significant levels of foreign aid allocated to Myanmar, with some USD 13.7 billion committed to new projects between 2011 and 2015 (not including Chinese assistance), demonstrate the high level of

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[86] J. Head, "The hardship that sparked Burma's unrest" (BBC News, 2 October 2007).

[87] A/HRC/6/14, paras. 27-28, 30, 38.

[88] A/HRC/8/12, para. 15.

[89] A/HRC/8/12, para. 24.

[90] World Bank, World Development Indicators database, Myanmar (http://databank.worldbank.org/data/views/reports/reportwidget.aspx?Report_Name=CountryProfile&Id=b450fd57&tbar=y&dd=y&inf=n&zm=n&country=MMR)

international goodwill toward Myanmar following its initial steps toward democratization.[91] This contributed to Myanmar's economic growth rates of approximately 7 per cent per annum since 2015.

2. The role of the military in government after the 2015 elections

80. In the November 2015 general election, the NLD won a sweeping victory, claiming 86 per cent of the non-military seats in the Assembly of the Union (*Pyidaungsu Hluttaw*), which is effectively about 60 per cent of the total number of seats. On 10 March 2016, U Htin Kyaw and U Henry Van Thio, the chosen candidates of the NLD, became President and Second Vice-President respectively. The military's candidate, Myint Swe, became First Vice-President. In March 2018, U Htin Kyaw resigned from the position of President. He was replaced by U Win Myint on 30 March 2018. Constitutionally barred from the position of President, Daw Aung San Suu Kyi was appointed to the position of State Counsellor, created for her, on 6 April 2016, and acts as the de facto head of the country. The powers of the State Counsellor are not clearly delineated in the law establishing the position.[92] The State Counsellor herself told a news conference just prior to the 2015 elections that, "if we win and the NLD forms a government, I will be above the president. It's a very simple message."[93] She has enjoyed overwhelming popular support and moral authority and an absolute majority in both houses of parliament.

81. Despite the elections and the NLD being in power, the Government remains a quasi-civilian one at best. The 2008 Constitution was designed by the military to retain its dominant role in politics and governance. It instituted a system of government with military and civilian components. Under the Constitution, 25 per cent of the seats in each house of parliament and in the state and regional assemblies belong to unelected members of the military, who are appointed by the Tatmadaw.[94] This is significant because the Constitution requires 75 per cent of votes in both houses of parliament for a constitutional amendment to be adopted, giving the Tatmadaw, through its appointed members of parliament, effective veto power. Furthermore, Parliament elects the President from among three proposed candidates, one nominated by each legislative body and the third by the military appointed members of parliament. This effectively guarantees the Tatmadaw at least one vice-presidential position. Additionally, the Tatmadaw selects candidates for (and effectively controls) three key ministerial posts: Defence, Border Affairs and Home Affairs. This is sufficient to control the National Defence and Security Council and the entire security apparatus.

82. The Commander-in-Chief of the Tatmadaw, Senior-General Min Aung Hlaing, is the Supreme Commander of all armed forces in Myanmar.[95] This deviates from the practice in most constitutional systems, where the head of state is usually the Supreme Commander to whom the highest-ranking military officers and institutions are subordinated. The Constitution also stipulates that the Tatmadaw has the "right to independently administer and adjudicate all affairs of the armed forces",[96] effectively removing it from any civilian oversight or control.

83. Current or former military officers occupy positions of authority across all branches of government, within the civil service and the judiciary, and in many State-owned enterprises.[97] This is notably so in the powerful General Administration Department

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[91] The Asia Foundation, The contested areas of Myanmar – Subnational Conflict, Aid, and Development (2017).

[92] The Republic of the Union of Myanmar – President Office, "President signs State Counsellor Bill into law" (6 April 2016). Copy of the State Counsellor Bill on file with the Mission.

[93] A. Marshall, T. Mclaughlin, "Myanmar's Suu Kyi says will be above president in new government" (Reuters, 5 November 2015).

[94] Constitution of Myanmar, s. 109(b), 141(b) and 161(d).

[95] Constitution of Myanmar, s. 20(c).

[96] Constitution of Myanmar, s. 20(b).

[97] The major productive sectors are dominated by over 30 State-Owned Enterprises, which are headed by senior members of the military or people closely affiliated with them. They operate in many sectors, from transport to textiles and banking to natural resources. Also, Myanmar holds significant

(GAD), which runs the civil service for state and regional governments and is often the first, sometimes only, contact people have with government officials or agencies.[98] The GAD is responsible for many basic administrative tasks, including registration of births, deaths and marriage, land and property ownership issues and other registration issues, such as livestock. Significantly, it is also responsible for the collection of taxes. The GAD falls under the Ministry of Home Affairs, one of the three ministries controlled by the Tatmadaw.

B. Ethnic and religious diversity

1. Ethnic diversity and insurgencies

84. The territory of present-day Myanmar is inhabited by a large number of groups with various ethnic, cultural, linguistic and religious backgrounds. The largest group are the Bamar, who are believed to comprise 60 to 70 per cent of the total population.[99] They are predominantly Buddhist and most live in the central lowlands of the country. Many other ethnic groups, with their distinct cultures, languages, traditions and sometimes religions, live mainly in the peripheral areas, near the borders with Bangladesh, China, India and Thailand. Before Burma gained independence, General Aung San and a number of ethnic leaders agreed, at the Panglong Conference in 1947, on a constitutional framework that recognised the distinctive identities of minorities and granted them a high degree of autonomy. The Panglong Agreement has never been implemented.

85. Several of these groups hold deep-rooted grievances, struggling for greater autonomy and an equitable sharing of natural resources. Since independence, the incessant ethnically based armed conflicts have been used by the Tatmadaw to justify its power, presenting itself as the guarantor of national unity. While successive Governments have made overtures towards negotiated peace agreements, hostilities have continued, in recent years predominantly in Kachin and Shan States. These conflicts indicate that the nation-building efforts of the military have failed:[100] there is no unifying "Myanmar" national identity, resentment against Bamar-Buddhist domination has grown, and the Tatmadaw has failed to end the insurgencies by military or negotiated means. Notably, under military rule, the concept of "national races" has gradually become the key criterion for membership in the country's political community,[101] creating a common "other". The military regime has constructed eight major ethnic groups (Kachin, Kayah, Karen, Chin, Bamar, Mon, Rakhine and Shan), broken down further into 135 "national races". There is no scientific basis for this division, which contains both gaps and overlaps. The arbitrary list defines those who "belong" in Myanmar; all others, regardless of how many generations they have lived in

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amounts of natural resources. It is, for example, the world's single largest source of jade. It has been alleged that since the 1990s, the then small-scale industry has been transformed by the military's moves to grant the right to operate jade mines to government-approved companies who are allegedly owned and operated by the military itself, by individuals that hold senior positions in the military, by armed groups with whom ceasefires have been concluded, or by other officially licensed enterprises. See: National Resource Governance Institute, *State-Owned Economic Enterprise Reform in Myanmar: the Case of Natural Resource Enterprises* (2018); Global Witness, *Jade: Myanmar's Big State Secret* (2015).

[98] See Kyi Pyar Chit Saw, M. Arnold, *Administering the State in Myanmar – An overview of the General Administration Department* (Myanmar Development Resource Institute's Centre for Economic and Social Development & The Asia Foundation, 2014).

[99] See 2014 Population and Housing Census of Myanmar (available at http://myanmar.unfpa.org/en/publications/2014-population-and-housing-census-myanmar-data-sheet).

[100] M. Walton, "Nation-Building" in *Routledge Handbook of Contemporary Myanmar*, A. Simpson, N. Farrelly, I. Holliday eds. (London and New York, Routledge, 2018), pp. 393-403.

[101] N. Cheesman, "How in Myanmar 'National Races' Came to Surpass Citizenship and Exclude Rohingya", *Journal of Contemporary Asia* (2017), 47:3, pp. 461-483.

Myanmar, are considered outsiders or immigrants. This includes the Rohingya. According to the Tatmadaw, "Despite living among peacocks, crows cannot become peacocks".[102]

86. Since 2016, the NLD-Government has led a peace process, the "Union Peace Conference-21st Century Panglong"; sessions have been held in August 2016, May 2017 and July 2018. In the run up to the third session in July 2018, the United Nations Special Rapporteur on Myanmar expressed concern that "the peace process appears to be losing its momentum", with "ethnic armed organizations" pointing to a failure by the Government and the Tatmadaw to take steps to earn the trust of stakeholders,[103] and through their blocking of internal consultations by parties to the Conference.[104] Nevertheless, all members of the Federal Political Negotiation and Consultative Committee, who had previously not been invited, were invited to and attended the third session of the Conference. This has been identified as a positive development.[105]

2. Place of Buddhism in society

87. According to the 2014 census, 87.9 per cent of the population of Myanmar is Buddhist, 6.2 per cent Christian and 4.3 per cent Muslim.[106] While the Bamar are predominantly Buddhist, many other ethnic groups contain large numbers of non-Buddhists. The 2008 Constitution recognizes the "special position" of Buddhism in Myanmar, while acknowledging other religions.[107]

88. Buddhism and the Buddhist monkhood have and retain a central place in Myanmar society and are a driving force within the politics of Myanmar. The monkhood has acted as a counterpoint where the State is perceived to act against the interests of its people. This is exemplified in the role of the Sangha[108] in opposing colonial rule and, more recently, military rule.

89. Since reforms began in 2011, a vocal component of the monkhood has perceived threats to Buddhist culture and responded through increased nationalist and anti-Muslim rhetoric. Myanmar has witnessed episodes of violence between Buddhists and Muslims across the country, although mainly in Rakhine State. The 969 Movement, led by vocal Buddhist monks, was especially forthright in establishing a narrative in which Muslims sought to "take over" Myanmar through the marriage and conversion of Buddhist women. Perceptions around illegal immigration from Bangladesh and the dominance of local capital by Muslims have also been identified as concerns, notwithstanding that the Muslim population in Myanmar as whole is estimated only at around 4 per cent, and has not drastically increased in recent decades.[109]

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[102] Tatmadaw, Directorate of the Public Relations and Psychological Warfare, "Myanmar Politics and the Tatmadaw" (2018), p. 115. Hard copy on file with the Mission.

[103] A/HRC/37/70, para. 40.

[104] Ibid.

[105] L. Weng, "All Members of Northern Alliance Invited to Attend Panglong Peace Conference" (The Irrawaddy, 4 July 2018). Previously, only those groups with ceasefire agreements in place had been invited to participate.

[106] According to the 2014 Population and Housing Census, the first census undertaken in Myanmar in three decades, the total population of Myanmar is approximately 51.5 million. The census was controversial as it only allowed participants to identify as belonging to one of 135 officially recognised ethnic groups (under eight major ethnic races: Kachin, Kayah, Karen, Chin, Bamar, Mon, Rakhine and Shan) or as "other". It did not include "Rohingya" and participants were not allowed to self-identify as such. This led to a significant part of the population in Rakhine State not participating in the count. Widespread fears that the release of data on the ethnic and religious composition of the population would lead to violence, initially led the Government to release the outcome of the census without data on ethnicity and religion. See International Crisis Group, *Update Briefing: Counting the Costs: Myanmar's Problematic Census* (2014).

[107] Constitution of Myanmar, s. 361-362.

[108] Sangha Maha Nayaka Committee (MaHaNa) is the Government-appointed body that regulates the Myanmar Buddhist clergy.

[109] In 2016, the Government released the census data related to religion. It showed that Buddhism remained the main religion in the country, with 87.9 per cent of the participants identifying as

90. In 2013, the Sangha prohibited the 969 Movement based on its unauthorised use of Buddhist symbolism. While the authority of the 969 group subsequently waned, its ideology was carried forward, notably through a successor group, the Association for the Protection of Race and Religion (known also as "MaBaTha"), established in June 2013 and rising to prominence in January 2014. One of its most prominent and radical leaders is controversial monk Ashin Wirathu.

91. While international attention focused on the group's anti-Muslim rhetoric, MaBaTha developed widespread grassroots support for its activities, promotion of cultural values and the provision of essential services, including social care, disaster relief, education, legal aid and dispute resolution at a local level.[110] MaBaTha has thus been perceived to be responsive to local community needs and concerns.[111] Further, the leadership of the MaBaTha is comprised of popular members of the monkhood.

92. On 23 May 2017, the Sangha issued a statement declaring that MaBaTha was not formed in accordance with the Sangha Organization Law and the Sangha Organizational Procedures, that neither the group nor individuals associated with it can use the full Myanmar language name it was using and that all of the organization's signboards across the country had to be taken down.[112] On 20 July 2018, the Sangha reportedly banned the Dhamma Wunthanu Rakkhita Association, the successor of MaBaTha, as well.[113] Regardless of their formal status, the narratives spread by these groups have become accepted in many circles across Myanmar.

C. History of human rights violations

93. Today, the Tatmadaw enjoys considerable popularity among the Bamar-Buddhist majority. The violence, particularly the "Rohingya crisis" in Rakhine State, has been used by the military to reaffirm itself as the protector of a nation under threat and to cement its political role further. This is remarkable considering its appalling human rights record and the long struggle of the democracy movement against its rule.

94. During the military dictatorship (1962-2011), Myanmar was considered one of the most repressive countries in Asia. The main concern of the rulers was to maintain power and to attain and preserve "national unity in the face of ethnic diversity". Human rights were "subordinate to these imperatives".[114] In 1997, the then United Nations Special Rapporteur on the situation of human rights in Myanmar observed that "the absence of respect for the rights pertaining to democratic governance is at the root of all the major violations of human rights in Myanmar in so far as this absence implies a structure of power which is autocratic and accountable only to itself, thus inherently resting on the denial and repression of fundamental rights".[115] Reports of serious human rights violations were pervasive, affecting the entire spectrum of civil, political, economic, social and cultural rights.

95. During Ne Win's rule (1962-1988), reports of serious human rights issues arose largely in two contexts: the suppression of critics and the security forces' operations against insurgencies in ethnic areas. Types of human rights violations frequently reported included

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Buddhist in 2014, compared to 89.4 per cent in 1983. 2.3 per cent of the enumerated population identified as Muslim, a drop from 3.9 per cent in 1983. However, the census report noted that, assuming that the entirety of the more than 1 million estimated non-enumerated residents of Rakhine State were Muslim, the percentage of Muslims would increase to 4.3 per cent. The number of Christians rose slightly, from 4.9 per cent in 1983 to 6.2 per cent in 2014.

[110] International Crisis Group, *Buddhism and State Power in Myanmar* (2017).

[111] M. Walton, "Misunderstanding Myanmar's Ma Ba Tha" (Asia Times, 9 July 2017).

[112] Ibid.

[113] The Irrawaddy, "Nationalists Rally in Yangon to Denounce New Ban on Ma Ba Tha" (13 August 2018).

[114] C. Renshaw, "Human rights under the new regime", in *Constitutionalism and Legal Change in Myanmar*, A. Harding, K.K. Oo, eds. (Oxford and Portland, Hart Publishing, 2017), pp. 215 and 218.

[115] E/CN.4/1997/64, para. 102.

the arbitrary deprivation of life (including through excessive use of force), arbitrary detention and torture, sexual violence, forced labour, violations of land and housing rights (including through mass expulsions), and violations of the rights to freedom of expression and peaceful assembly.

96. Following the violent repression of anti-Government protests in 1988 and the 1990 elections, Myanmar became a country of concern at the United Nations. The General Assembly adopted its first resolution on the situation in Myanmar in 1991, noting with concern the "substantive available information indicating a grave human rights situation in Myanmar".[116] Similar resolutions were adopted most years thereafter. The Commission on Human Rights created the mandate of Special Rapporteur on the human rights situation in Myanmar in 1992.[117] The United Nations Secretary-General appointed a Special Envoy to Myanmar in 1997. In 2005, the Security Council decided to hold a first, closed-door briefing on the situation in Myanmar.

97. The four Special Rapporteurs serving between 1992 and 2011 all concluded that the patterns of human rights violations they had identified were widespread and systematic and linked to State and military policy. Special Rapporteur Rajsmoor Lallah, in 1998, stated that human rights violations "have been so numerous and consistent over the past years as to suggest that they are not simply isolated or the acts of individual misbehavior by middle- and lower-rank officers but are rather the result of policy at the highest level, entailing political and legal responsibility".[118] Special Rapporteur Tomas Ojea Quintana, in 2010, similarly concluded that, "[g]iven the gross and systematic nature of human rights violations in Myanmar over a period of many years, and the lack of accountability, there is an indication that those human rights violations are the result of a State policy that involves authorities in the executive, military and judiciary at all levels". He added that "the possibility exists that some of these human rights violations may entail categories of crimes against humanity or war crimes".[119] All four Special Rapporteurs also noted serious abuses committed by non-State armed groups.[120]

98. The Special Rapporteurs identified the following contexts in which these patterns of abuse mainly occurred: suppression of calls for democracy and voices critical of the regime; imposition of oppressive measures towards minority groups; security forces' responses to (ethnic) insurgencies, often directly targeting and impacting on the civilian population; the military's continued presence in ceasefire areas; and the Government and military's role in large-scale development projects. Specific types of human rights violations frequently reported included the arbitrary deprivation of life, torture and inhuman treatment, forced labour, sexual and gender-based violence, arbitrary arrest and detention, forced displacement, restrictions on the freedoms of expression and association, and various oppressive measures directed in particular at ethnic and religious minorities. The impact of the regime's policies on the realization of economic and social rights was also frequently highlighted.

99. The Special Rapporteurs have often highlighted large-scale internal displacement and significant refugee movements into neighbouring countries, mainly Bangladesh and Thailand, as a consequence of armed conflict, human rights abuses and lack of protection. Special Rapporteurs noted that between 1996 and 2010 up to 1 million people had been displaced, half of them in the eastern part of the country,[121] and – for example – that in November 2006 the total number of internally displaced persons who had been forced to leave their homes and had not been able to return or resettle and reintegrate into society was estimated to be at least 500,000.[122] The various Special Rapporteurs identified several main causes of this displacement: counterinsurgency operations, the practice of forced labour and

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[116] A/RES/46/132

[117] E/CN.4/RES/1992/58

[118] A/53/364, para. 59.

[119] Ibid., para. 121.

[120] E.g. A/65/368, para. 64.

[121] See A/HRC/13/48, paras. 61-63; for similar figures, A/HRC/4/14, para. 54.

[122] A/HRC/4/14, para. 54.

portering, restrictions placed on farmers, and land confiscation policies.[123] They emphasized that the role and conduct of the army was paramount to understanding the issue.[124] In 2010, Special Rapporteur Quintana stated that humanitarian and human rights groups had documented the destruction and forced relocation of over 3,500 villages and sites in eastern Myanmar since 1996.[125]

100. All United Nations Special Rapporteurs who have held the mandate, as well as other human rights mechanisms, have expressed grave concern at the situation of the Rohingya in Rakhine State. On 16 October 1992, then Special Rapporteur on Freedom of Religion or Belief informed the Government that he had received information that "since late 1989, the Rohingya citizens of Myanmar … have been subjected to persecution based on their religious beliefs involving extrajudicial executions, torture, arbitrary detention, forced disappearances, intimidation, gang-rape, forced labour, robbery, setting of fire to homes, eviction, land confiscation and population resettlement as well as the systematic destruction of towns and mosques".[126] He noted that approximately 300,000 Rohingya had reportedly fled to Bangladesh by April 1992, and that a similar campaign in 1978 had also led to a reported 200,000 Muslims fleeing to Bangladesh. He added that these violations were alleged to be primarily committed by the armed forces, mentioning also that he had received numerous reports of security officers confiscating or tearing National Registration Cards of Muslims. He further stated that, according to his sources, there appeared to be a government policy of moving non-Muslim Burmese into northern Rakhine State in an effort to displace the people the Government called "foreigners", and that Muslims were said to have been virtually prisoners of their provinces since 1964, not being allowed to travel even between villages within a single township.[127]

101. In 1993, Special Rapporteur Yozo Yokota also reported that his information strongly indicated that the "Rakhine Muslims" had been singled out for human rights violations, which had resulted in approximately 250,000 persons being forced to flee into Bangladesh.[128] In nearly all subsequent reports of the United Nations Special Rapporteurs, the issue was raised as a continuing source of grave concern. In this context, all Special Rapporteurs assessed that the 1982 Citizenship Law was discriminatory, in violation of Myanmar's obligations under international law, and created conditions that promoted statelessness, in particular for the Muslim population of Rakhine State.[129]

102. In 2007, Special Rapporteur Sergio Pinheiro, together with five other special procedures of the Human Rights Council, publicly called on the Government of Myanmar to take urgent measures "to eliminate discriminatory practices against the returnees in northern Rakhine State".[130] In 2008, the Special Rapporteur concluded that the Rohingya were "subject to systematic discrimination and abuse …, especially with regard to the restriction of movement, arbitrary taxation, forced labour, confiscation, forced eviction and

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[123] E.g. E/CN.4/1997/64; E/CN.4/1999/35.

[124] E/CN.4/1997/64; E/CN.4/1999/35; A/HRC/13/48, para. 61-63.

[125] A/HRC/65/368, para. 49; for similar figures, A/61/369, para. 44 and A/HRC/4/14, para. 54.

[126] E/CN.4/1993/62.

[127] The Government of Myanmar responded that there was no discrimination based on religion, that the allegations were "fabricated by some big countries and certain foreign news agencies", that "among those who fled were mostly poor people who were lured by stories that relief food and goods were being distributed on the other side" and that "some left because they were threatened by terrorist insurgents to burn down their houses", that the issue was one of "illegal immigration" which had also been the cause of the "outflow of people of Bengali stock back in 1978", that the "Rohingya do not exist in Myanmar either historically, politically or legally", that the Tatmadaw was a "methodically and systematically organized institution made up of highly trained and disciplined personnel", and that the "grotesque allegations made against the Tatmadaw were totally false." See E/CN.4/1993/62.

[128] E/CN.4/1993/3, para. 235.

[129] Ibid, para. 226; A/62/223, para. 57. Early on, one of the Special Rapporteurs pointed out that these discriminatory laws would in the short term produce serious violations of the rights of both minorities and other persons living in the country as well as a sense of not belonging to Myanmar. In the long term, he forecast, the situation was likely to encourage and exacerbate secessionist movements likely to be destructive of a multi-ethnic and multi-religious nation (A/52/484, para. 151).

[130] A/62/223, para. 55.

arbitrary arrest (including harassment and violence by police forces, death in custody and sexual violence). In addition, people are often harassed (house searches, confiscation of assets) or beaten by police forces, mainly during controls or at checkpoints. Cases of rape of young women and children, perpetrated by different police forces, have been reported."[131] Special Rapporteur Quintana, in 2010, similarly stated that, based on his assessment of the situation during a mission to northern Rakhine State, he was "deeply concerned about the systematic and endemic discrimination faced by the … Rohingya"[132], also specifically noting that the Myanmar authorities had refused to issue birth certificates to many Muslim children since 1994 which had led to further discrimination.[133] He identified the "problem of statelessness" as the "root of chronic scourges endured by [this] population".[134]

103. Importantly, for nearly three decades all Special Rapporteurs have stressed that systemic impunity for human rights violations and abuses was a critical obstacle to the realization of human rights in Myanmar and had contributed to or compounded recurrent patterns of violations.[135]

104. Allegations of serious human rights violations and abuses have continued in the period since 2011. These are the focus of this report.

IV. Emblematic situation 1: Kachin and Shan States

105. The Mission focused its fact-finding work on three emblematic situations: the hostilities and other military conduct in Kachin and Shan States and their human rights impact; the crisis in Rakhine State in all its facets; and infringements on the exercise of fundamental freedoms. In the context of the latter issue, it also examined the prevalence of "hate speech".

106. Since 2011, the decades old conflicts in Kachin and Shan States have escalated, with episodes of intense fighting between the Tatmadaw and "ethnic armed organizations" (EAOs), as well as incidents of non-State armed groups fighting each other. In June 2011, a 17-year ceasefire between the Kachin Independence Army (KIA) and the Tatmadaw broke down. In Shan State, the conflicts have been characterised by a complex patchwork of armed actors and shifting territorial control. The Mission has amassed information regarding the conduct of hostilities in the context of several of these conflicts and their human rights and humanitarian impact on the civilian population. It verified a number of incidents in the context of these armed conflicts and confirmed consistent patterns of violations of international law.

107. Despite attempts to sign peace agreements with some of the EAOs since 1961, several groups have been ostracized from the peace process, and hostilities have continued even with some parties to the National Ceasefire Agreement (NCA). The NCA was signed on 12 October 2015 with eight EAOs. Groups that have not signed include the Kachin Independence Army (KIA), the Myanmar National Democratic Alliance Army (MNDAA), the Ta'ang National Liberation Army (TNLA)[136] and the Arakan Army (AA). Among the groups currently involved in hostilities in Kachin and Shan States, only the Shan State Army-South (SSA-S)[137] signed the NCA but clashes continue between it and the Tatmadaw, parallel to the peace process. The Shan State Army-North (SSA-N)[138] has not yet signed the NCA. The NLD-Government has led a peace process, the "Union Peace Conference-21st Century Panglong"; sessions have been held in August 2016, May 2017

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[131] A/HRC/7/18, para. 78.

[132] A/HRC/13/48, para. 86.

[133] Ibid., para. 88.

[134] A/64/318, para. 72.

[135] E.g. reports of Special Rapporteur Sergio Pinheiro, including A/61/369 (para. 27-33), in which he discussed several manifestations of impunity. Also E/CN.4/1999/35, para. 78; A/62/233, para. 30.

[136] Armed wing of the Palaung State Liberation Front (PSLF).

[137] Armed wing of the Restoration Council of Shan State (RCSS).

[138] Armed wing of the Shan State Progress Party (SSPP).

and July 2018. The Federal Political Negotiation and Consultation Committee (FPNCC) is currently the most powerful umbrella coalition of EAOs,[139] attempting to unite these groups in their negotiations with the central Government. Progress has been slow.

108. All EAOs operating in Kachin and Shan States share a common opponent, the Tatmadaw. Most EAOs have forged cooperative links with each other. The AA, the MNDAA, the KIA and the TNLA collaborate as the Northern Alliance (and are all member of the FPNCC). The Tatmadaw is fighting with the KIA, TNLA, SSA-S, SSA-N and MNDAA and with the Northern Alliance. Since November 2015, the SSA-S and the TNLA have also been fighting each other with the level of intensity rising to a non-international armed conflict. Various militia groups are also involved in the conflicts, mostly alongside the Tatmadaw.

109. The populations of Kachin and Shan States comprise various ethnic and religious minorities.[140] Many of these minorities have struggled for decades for greater autonomy and against what they perceive to be a central government that has favoured Bamar-Buddhists politically and economically. These grievances have been aggravated by the Tatmadaw's historic use of counterinsurgency tactics that directly affected the civilian population. The Tatmadaw intentionally, frequently and systematically targeted the civilian population because the Tatmadaw identified all civilians of an ethnic group as members of the EAO of that particular group or in retaliation for attacks by the EAO against the Tatmadaw. Villages were cleared and land was burned.

110. The conflicts in Kachin and Shan States are also fuelled by the exploitation of natural resources; land use and major infrastructure projects; and narcotics trading. Indeed, many interviewees informed the Mission that the drug trade had "taken over" the region and that ordinary people were left with few economic opportunities: "either they trade drugs or engage in war by joining armed groups".[141] Most parties to the conflicts are involved in illicit economic activity, contributing to insecurity and affecting the human rights situation, including by the appropriation of civilian land to conduct such activities.[142]

111. Many reported violations have been committed within the context of the exploitation of natural resources or development projects by some parties to the armed conflicts, predominantly the Tatmadaw.[143] For example, an expert witness mentioned that the locations of fighting in Kachin State follow the development of a national highway.[144] Other interviewees asserted that the Tatmadaw targeted them because they had witnessed illegal timber exploitation[145] or that they were tortured because the Tatmadaw wanted information on access to KIA-controlled amber exploitation zones.[146] Victims and witnesses of hostilities in Tanai Township, Kachin State, in 2017 and 2018 said that the overall objective of the Tatmadaw operations was to "destroy the KIA's economy by appropriating amber and mining resources under their control".[147]

112. Violations against ethnic and religious minorities in northern Myanmar are committed in a context of severe discrimination on ethnic and religious grounds, often with persecutory intent. This manifests, for example, in the destruction or ransacking of churches

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[139] The FPNCC is comprised of seven member-organizations including the six armed groups active in Shan and Kachin States: AA (United League of Arakan), KIA, MNDAA, TNLA, SSA-N, and the United Wa State Army (UWSA).

[140] The peoples of Shan State include the Shan, Pa-O, Intha, Lahu, Lisu, Taungyo, Danu, Ta'ang, Ahka and Jinghpaw (Kachin), Shan-Chinese (Han), Shan-Ni and Kokang. The peoples of Kachin State include the Jinghpaw, Shan, Ruwang, Lisu, Zaiwa, Lawngwaw, Lachyit, Rakhine and Bamar. Many of the ethnic minority groups have substantial numbers of Christians among their members. Some groups are predominantly Christian.

[141] PI-031, QM-014.

[142] PI-022, QI-089, SI-003.

[143] PI-013, PI-022, PI-026, PI-032, PI-039, PI-048, PI-054, PI-061, PI-077, PI-103, QI-080.

[144] QM-018.

[145] PI-039, PI-048.

[146] PI-054; see this chapter, section A.8. Emblematic incidents (Tanai).

[147] PI-043, PI-049, PI-054; see this chapter, section A.8. Emblematic incidents (Tanai).

and religious objects during military operations (and sometimes subsequent erecting of Buddhist pagodas)[148] but also in the use of ethnic or religious slurs during the commission of gross human rights violations[149] and in treatment of people as inferior or even "sub-human".[150] For example, a victim reported, "The Tatmadaw soldiers don't treat us like humans, they treat us like animals. They look at us as if we should not even exist. Even though the name is Kachin State, they don't think Kachin should be there and exist."[151] Another victim reported that the Tatmadaw said, "You Kachin people are like our penis".[152] Several interviewees also reported that they experienced discrimination in the educational system. They claimed that in government-controlled areas education was provided in Myanmar language and that they "did not understand much" [153] or that they could hardly identify or fully participate in the educational curriculum because the teachers did not speak their language.[154] The systemic discrimination on the basis of ethnicity or religion that underlies the human rights violations identified by the Mission warrants further investigation.

113. While the Mission focused its work on the situation in Kachin and Shan States, it also received information on other areas, such as Kayah or Kayin States. For example, the Mission was able to verify that, on 20 December 2017, Tatmadaw soldiers killed three Karenni National Progressive Party (KNPP)/Karenni Army members and one civilian at a KNPP checkpoint in Kayah State.[155] The Tatmadaw soldiers held the men at the checkpoint and executed them on the spot. One KNPP member managed to escape and is now in hiding. The Mission has reasonable grounds to conclude that the victims were unlawfully killed because they observed the Tatmadaw transporting illegally logged timber. The human rights situation in Kayah and Kayin States and in other areas, as a consequence of the presence of Tatmadaw troops and the militarisation of areas, warrants specific investigation.

114. The continuation of conflict and prevailing insecurity in Kachin and Shan States provide strong reasons to conclude that the kind of violations and abuses outlined in this chapter are still occurring, warranting further monitoring and investigation.

A. Patterns of violations committed by Myanmar military and security forces

1. Conduct of hostilities in flagrant disregard of civilian life and property

115. Since 2011, numerous reports have drawn attention to policies, tactics and conduct of the Tatmadaw and associated security forces that have resulted in serious violations of international law committed in the context of their operations in Kachin and Shan States. These reports invariably point at the devastating impact of military operations on the civilian population. The Mission is able to confirm patterns of attacks directed by the Myanmar military against civilians and civilian or other protected objects, as well as indiscriminate attacks. These have often been carried out in civilian populated residential areas and in the absence of an apparent military objective justifying the use of these tactics, in flagrant disregard of life, property and the well-being of the civilian population. Attacks resulted in the deaths and injuries of civilians. Widespread looting, as well as the destruction and burning of homes and property, have often accompanied military operations. The picture that emerges is one of a military that systematically fails to apply the fundamental international humanitarian law principles of distinction and precaution, and shows sheer contempt for basic human rights. This conduct was observed in most conflict-

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[148] PI-032, PI-049, PI-104, SI-003.

[149] DI-063, DI-064, DI-066, PI-003, PI-007, PI-004, PI-026, PI-069, QI-090, QI-096.

[150] PI-087, QI-094, PI-031, DI-061.

[151] QI-094.

[152] PI-028.

[153] DI-040, PI-040.

[154] DI-040, PI-024.

[155] K-135, PI-039, PI-048.

affected areas, especially in or around territory under the control of ethnic armed organizations, and throughout the period under review.

116. Due to the non-cooperation of the Myanmar authorities, the Mission was unable to conduct site visits or to hear the Tatmadaw's version of events. While it would have been preferable to collect *in situ* information about some of the military operations and their broader context, the body of information collected is sufficiently comprehensive, consistent and credible to enable the Mission to make solid findings.

(a) Legal framework

117. During armed conflict, international humanitarian law applies alongside international human rights law. The key purpose of international humanitarian law is to protect the victims of armed conflicts and to regulate hostilities, in an effort to limit the humanitarian consequences of armed conflicts.[156] It restricts the means and methods of warfare that parties to a conflict may employ and endeavours to ensure the protection and humane treatment of persons who are not, or no longer, taking a direct part in the hostilities. The cornerstone of international humanitarian law is the principle of distinction: the parties to the conflict must at all times distinguish between civilians and combatants (fighters) and between civilian objects and military objectives.[157] Attacks may therefore only be directed against combatants (fighters) and never against civilians. A corollary of the principle of distinction is the duty of parties to the conflict to avoid or, in any event, minimize the infliction of incidental death, injury and destruction on persons or objects protected against direct attack. This is the principle of precaution: in the conduct of hostilities "constant care shall be taken to spare the civilian population, civilians and civilian objects".[158] This requirement applies to the attacking party and the party that is attacked.[159] A third cardinal principle of international humanitarian law is the principle of proportionality. This means that it is prohibited to launch an attack that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.[160]

118. It flows from the above that direct attacks against civilians are absolutely prohibited and so are acts or threats of violence the primary purpose of which is to spread terror among the civilian population.[161] Indiscriminate attacks are also prohibited. These are attacks of a nature to strike military objectives and civilians or civilian objects without distinction because: (1) they are not directed at a specific military objective, (2) they employ a method or means of combat which cannot be directed at a specific military objective, or (3) they employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law.[162]

119. Violations of these cardinal rules of international humanitarian law may amount to war crimes. For instance, it is a war crime to make the civilian population or individual civilians, not taking part in hostilities, the object of an attack. Other war crimes include: making civilian objects the object of attack; launching an indiscriminate attack resulting in death or injury of civilians or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage; seizing property of the adverse party not required by military necessity, and pillage.[163]

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[156] N. Melzer, *International Humanitarian Law – A Comprehensive Introduction* (ICRC, Geneva, 2016), p. 17.

[157] ICRC/Customary IHL, rules 1 and 7.

[158] ICRC/Customary IHL, rule 15.

[159] ICRC/Customary IHL, rules 15 and 22.

[160] ICRC/Customary IHL, rule 14.

[161] ICRC/Customary IHL, rules 1 and 2.

[162] ICRC/Customary IHL, rule 12.

[163] See ICC Statute, art. 8.

(b) Findings

120. Based on the body of information and material amassed, the Mission concludes that there is a pattern of Tatmadaw military operations, connected to the armed conflicts in Kachin and Shan States, that are in violation of the core principles of international humanitarian law. The following key factual patterns were established.

Attacks directed at the civilian population or civilians, and indiscriminate attacks

121. The Tatmadaw intentionally, frequently and systematically directed attacks against the civilian population or individual civilians. The Tatmadaw has also systematically engaged in attacks that were indiscriminate, either because they were not directed against a specific military objective or because they employed a method or means of combat that cannot be directed at a specific military objective.

122. A regular and systematic occurrence, for example, is the attacking of villages in Kachin and Shan States for the apparent sole reason that the residents belong to the same ethnic group as a particular enemy "ethnic armed organization" and so are considered members or supporters of that organization simply because of their ethnicity. Villages are also attacked in retaliation for attacks by such groups against the Tatmadaw.[164] This pattern is noted across villages and towns in conflict-affected areas. The Mission received consistent accounts of Tatmadaw soldiers entering villages, going to civilians' homes, or gathering men (often including the village administrator) at the centre of the village to question them on their affiliation with armed groups or the whereabouts of such fighters, or any other information regarding these groups.[165] If villagers did not answer, they were beaten and/or tied-up, and otherwise ill-treated or tortured.[166] For example, a witness gave the following account of an instance in 2012 when Tatmadaw soldiers entered her village, Nung Ong, in Mongkaung Township, Shan State:

> *The Tatmadaw always wanted to gather information on the Shan armed groups. If villagers did not have any information, the soldiers would tie people up and threaten them. When they came to our houses, Tatmadaw soldiers would ask "Do you know anything about the Shan army? If you do not answer, we will kill you!" I saw this happen with my neighbours. Soldiers used a rope to hit my neighbours and they tied up their hands while pointing their guns at them.*[167]

123. Multiple accounts received indicate that the Tatmadaw does not specifically or necessarily target locations where non-State armed groups are based or active, but rather launches attacks on villages because residents are of the same ethnic background as the fighters, or because the villages are in the nearest location to a recent operation from the armed group.[168] One example is of a Tatmadaw operation in Man Lan village in Namhsan Township in northern Shan State on or around 24 June 2017.[169] The TNLA and the Tatmadaw had been fighting in the area, but not close to the village. Tatmadaw soldiers bound, beat, and threatened civilians with death, accusing them of supporting the TNLA. Soldiers arrested about 20 villagers and it was reported that they deprived those who were captured of food, water, and access to toilet facilities. It was also reported that the Tatmadaw soldiers confiscated the civilians' mobile phones.[170] Residents of Man Lan village later found the body of one of the men who had been taken by the soldiers.[171] All of those taken by Tatmadaw soldiers were Ta'ang.

124. In another example, a victim reported that the Tatmadaw used firearms and mortar directly at a group of 13 women escaping from the fighting between TNLA and the

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[164] PI-026, PI-043, PI-045, PI-046, PI-087, PI-101, SI-002.

[165] DI-068, PI-065, PI-074, PI-087, PI-101.

[166] DI-066, DI-068, PI-074; see this chapter, section A.3: Torture and other ill-treatment.

[167] DI-068.

[168] K-136, DI-057, DI-065, DI-067, PI-065, PI-074, PI-087, PI-101.

[169] K-137, PI-074, V-093.

[170] V-093.

[171] K-137, PI-074, V-093.

Tatmadaw in a village of Namkhan Township, in Shan State on 2 May 2017. The victim's mother, her sister and another child were hit by bullets and fragments from mortar explosions. She said, "Even though we were all women fleeing, the Tatmadaw considered us as TNLA and shot at us."[172]

125. Another type of intentional attacks on civilians is the practice of Tatmadaw soldiers, in the course of their military operations, deliberately shooting at or otherwise targeting the civilian population or individual civilians not taking direct part in hostilities. In many instances, the Tatmadaw has shot directly at civilians fleeing or seeking shelter, or launched mortar shelling on a group of civilians.[173] In Shan State, for instance, a witness reported that the Tatmadaw twice attacked the village of Manwing in Namhkan Township, the first time on or around 5 January 2016 and a second time around 25 February 2016. The witness said:

> *The Burmese soldiers entered the village, and they were shooting at the villagers who were trying to run. They were not shooting at KIA armed men but at civilians. There were no KIA men in the village, as their post was two hours away by foot.*[174]

126. On many occasions, the Tatmadaw launched attacks on villages under the apparent assumption that fighters of EAOs were present at such locations but without seemingly making any efforts to establish this ahead of initiating the attack or further assessing it in the course of the attack. This is in violation of the rule that parties to the conflict must do everything feasible to verify that targets are military objectives.[175] During subsequent operations in villages and towns, the Tatmadaw did also not attempt to distinguish civilians from military objectives. Such indiscriminate attacks resulted in civilian men, women and children being injured or killed, with large numbers of civilians being driven away from their homes and villages.[176]

127. In many attacks reported, the Tatmadaw did not have a specific military objective when targeting the villages. Sources informed the Mission that, in many cases, the EAOs' posts or bases were located far outside the villages under attack.[177] For example, a witness stated that the Tatmadaw had fired mortar shells at Gar Yar Yang village in Mansi Township, Kachin State, in February 2013. He stated that there was no KIA base near the village, that there was no fighting with the KIA or efforts on the part of the Tatmadaw to target members of the KIA: they merely shot at the villagers.[178] As a further example, Nam Ha village in Muse Township, Shan State, was reported to have been attacked on or around 14 December 2016, both by mortar shelling and airstrikes by four jet fighter planes. The village was composed of nearly a hundred households and had a population of over 500 villagers, with no members of EAOs present during the attacks and with no other military assets in the village: "There were no rebels in my village. But the army just came and attacked the people."[179]

128. Information therefore strongly indicates that airstrikes and shelling were used indiscriminately as a more general tactic in the context of "clearance operations", in essence attacking the civilian population as a whole as opposed to being used against specifically identified military targets.[180]

Failure to take requisite precaution in attacks

129. Even in cases where information indicates that the Tatmadaw attack was in pursuit of a specific military objective, for example, the capture or weakening of an EAO's base,

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[172] PI-073.

[173] DI-057, DI-069, PI-043, PI-044, PI-047, PI-073, PI-087, QI-094; see this chapter, section A.8: Emblematic incidents.

[174] PI-087.

[175] ICRC/Customary IHL, rule 16.

[176] DI-057, DI-066, PI-043, PI-044, PI-049, PI-050, PI-053, PI-065, PI-074, PI-087, PI-101.

[177] DI-057, PI-026, PI-073, PI-101

[178] PI-026.

[179] DI-057.

[180] See this chapter, section A.8: Emblematic incidents (Tanai).

the attack often still failed to respect the principles of precaution.[181] This is especially the case when the attack occurred in densely populated civilian areas. Attacks were launched which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination of the three, which would be excessive in relation to the concrete and direct military advantage anticipated.

130. For example, on the morning of 14 January 2013, two artillery rounds landed near the centre of the city of Laiza in Kachin State, killing three civilians, all of whom were men.[182] While the KIA headquarters are located in Laiza, a city densely populated by civilians, there was no apparent specific military objective near where the shells impacted. The Tatmadaw fired artillery from Hkang Hkai Bum military base, with the first round landing in front of a civilian home, killing two civilians and injuring others. The second round of artillery landed in front of another house close to the first, killing a child. In addition to the three persons killed, at least four civilians were injured in the incident, including two women and two children. A witness mentioned that the shrapnel hit one of the children, a young girl, and that she was paralysed as a consequence.[183] Credible information received indicates that the round impacted near a busy street, deflecting most of the blast towards the house, and away from the many people walking on the sidewalks nearby.[184]

131. This incident, as well as most other incidents involving the use of explosive weapons in or around civilian areas examined by the Mission, did not show a pattern that would indicate a legitimate attempt to target a specific military objective.[185] For example, to be used with accuracy against a specific military target, artillery needs to have its fire planned and directed. Initial rounds fired by artillery are often not on target, so adjustments need to be made in order to "fire for effect" on the identified military target. However, this pattern was not discernible in the cases examined. Apart from the fact that explosive weapons ordinarily have wide-area effect and are therefore likely to have indiscriminate effects in densely populated areas, their use in such areas also commonly causes a widespread and predictable pattern of harm. In Kachin and Shan States, the Tatmadaw's airstrikes and shelling into populated residential areas have repeatedly caused the death and injury of civilians and significant damage to civilian buildings.[186] Opting to use bombs or shelling in such areas, in particular where specific military objectives are unclear and civilian areas are densely populated, will therefore often be indiscriminate and in violation of the principle of precaution in attacks.

132. Similarly, on 5 August 2017, in Maw Saung village in Kutkai Township in Shan State, the Tatmadaw launched explosives from the air that landed on a tree next to a woman's house. Shrapnel hit the woman in her stomach and she died on her way to the hospital.[187] According to the witness, the Tatmadaw had attacked the village because on the previous day the TNLA had come to the area in the context of a drug elimination programme. The TNLA left the village and clashed with the Tatmadaw on the outskirts. Subsequently, the Tatmadaw shelled the village. [188]

133. Furthermore, information collected by the Mission also indicates that the Tatmadaw has systematically engaged in hostilities with EAOs without providing adequate warnings to civilians to allow them to evacuate the area targeted for military operations, or to take feasible precautions during the course of the attacks.[189] For example, in June 2017, the Tatmadaw dropped leaflets warning civilians to evacuate prior to airstrikes on Nganga

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[181] DI-066, PI-024, PI-026, PI-050, PI-054, PI-065, PI-072.

[182] K-136, SI-002, V-096.

[183] SI-002.

[184] K-136, SI-002, V-096.

[185] DI-061, DI-062, PI-042, PI-043, PI-045, PI-072, PI-101, SI-002.

[186] DI-057, DI-061, DI-066, PI-043, PI-045, PI-046, PI-049, PI-054, PI-072, PI-073.

[187] PI-072.

[188] K-137, PI-072.

[189] PI-042, PI-049, PI-103.

village, Tanai Township, Kachin State, but Tatmadaw soldiers then partly prevented civilians from leaving the area, shutting down most routes.[190]

Destruction, appropriation or looting of civilian property and other protected objects

134. The Mission collected multiple accounts and other information regarding the Tatmadaw's widespread practice of attacking, destroying and looting of civilian property or other protected objects as part of its military operations.[191] Witnesses consistently reported that the Tatmadaw systematically pillaged villagers' belongings, including livestock, food supplies and money.[192] In addition, the Tatmadaw destroyed and ransacked civilian homes, and sometimes schools, health clinics and churches,[193] including by setting them on fire. In many cases, the attacks were seen as targeted against particular individuals or entire villages based on their perceived affiliation and allegiance to armed groups, seemingly merely because they share the same ethnicity.[194]

135. For example, a witness reported that Garayang village, Waingmaw Township, Kachin State was entirely burnt by the Tatmadaw during an offensive attack against the KIA on 16 June 2011. She fled to an IDP camp because of the fighting and, when she returned to her village in 2012 to gather some belongings, she found:

> *Nothing was left in our village. There were parts of my village that were entirely burned down. The school was destroyed and so were most of the houses. I was not able to recuperate any of our belongings from our village.*[195]

136. Similarly illustrative, although falling outside the reporting period, a victim reported that her village, Hoktai in Mongkaung Township, Shan State, was completely destroyed in 2009 by the Tatmadaw who had made a foray in the area in search of members of the Shan ethnic armed groups. As they could not find any armed men, they burned all huts in the village, starting with the village administrator's home.[196] She said:

> *For the houses that could not burn easily, Tatmadaw soldiers poured gasoline all around the house and then set it on fire. They used a stick with dry grass on the top, poured gasoline onto it, set it on fire, and then threw the burning stick onto the houses. There were 50 to 60 homes in my village, and these were all set on fire. It took the soldiers only two to three hours to burn the entire village. Some villagers died in the fire.*[197]

137. Another victim reported that the Tatmadaw attacked his village near Waingmaw, Kachin State in June 2011, and more specifically that:

> *The Tatmadaw attacked and destroyed the village - no one has lived there since. I heard from other villagers that the inside of the houses are a mess after the soldiers ransacked them. I also heard that our village was burned down and there were many bullet holes in the houses. Some houses were burned, and there are landmines in the village. Villagers had to leave everything when they fled, including the livestock. These were probably eaten by the military. We had only taken a few items when we left, as we thought that we would leave only for a short while. But now all our possessions are gone or destroyed.*[198]

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[190] PI-049, PI-103, V-062; see this chapter, forced displacement, confiscation and destruction of property, and denial of humanitarian assistance section; see this chapter, section A.8: Emblematic incidents (Tanai).

[191] D-066, DI-068, DI-069, PI-024, PI-026, PI-042, PI-043, PI-045, PI-046, PI-047, PI-049, PI-050, PI-054, PI-065, PI-073, PI-087.

[192] PI-073, PI-074.

[193] K-134, PI-024, PI-043, V-116.

[194] DI-062, DI-066, DI-068, DI-069, PI-024, PI-026, PI-042, PI-043, PI-045, PI-046, PI-047, PI-049, PI-050, PI-054, PI-065, PI-073, PI-087.

[195] PI-024.

[196] DI-069.

[197] DI-069.

[198] QI-094.

138. The Mission received credible accounts that over 200 churches have been attacked, ransacked or destroyed since June 2011 in Kachin and Shan States. While some of these churches may have been used by EAOs, thereby losing their protected status, it was not possible to verify whether this applies to all 200 churches. The subsequent erecting of pagodas on compounds of some churches suggests that the motives of these attacks may have been different.[199]

2. Unlawful killings

139. The Mission amassed a consistent and credible body of information establishing a pattern of violations of the right to life, with numerous unlawful killings. These mostly occur in the context of military operations, as a consequence of indiscriminate attacks, attacks directed at civilians, or the murder or extrajudicial execution of persons in Tatmadaw custody. Unlawful killings also occurred in other contexts, without an immediate or apparent link to hostilities, for example in the context of forced labour.

(a) Legal framework

140. Under international human rights law, the right to life is a non-derogable right which forms part of customary international law.[200] The prohibition of the arbitrary deprivation of life is a rule of *jus cogens*. This right protects individuals against killings by security forces. It is a violation of the right to life when State officials deliberately kill a person when it is not strictly necessary to protect life. This includes extrajudicial killings or executions, whereby a person is killed by, at the behest of, or with the acquiescence of State agents in the absence of a judicial process. The State is responsible for violations committed by non-State actors operating in support or as agents of State authorities.[201]

141. Life is also protected under international humanitarian law. Common article 3 of the Geneva Conventions prohibits "violence to life and person, in particular murder of all kinds" of civilians and persons *hors de combat*. A person *hors de combat* is anyone who is in the power of an opposing party; who is defenseless because of unconsciousness or injury; or who clearly expresses an intention to surrender.[202] The intentional killing of civilians or persons *hors de combat*, if the conduct took place in the context of and was associated with the armed conflict, constitutes the war crime of murder.

142. However, not all killings of civilians are unlawful under international humanitarian law. Civilians lose their protection for such time as they take direct part in hostilities (although, in case of doubt as to a person's status, s/he should be considered civilian).[203] A killing is unlawful if it is as a result of violations of the rules on the conduct of hostilities, for example, from a direct attack against civilians, from an indiscriminate attack, or from an attack against military objectives causing excessive loss of civilian life.

(b) Findings

Unlawful killings in the context of hostilities

143. The Mission amassed a considerable body of consistent information drawing the pattern of the Tatmadaw unlawfully killing civilians, including men, women and children, during their numerous military operations or incursions into villages and towns in Kachin and Shan States.[204] These result from the Tatmadaw's disrespect for the fundamental international humanitarian law principle of distinction between civilians and fighters, the

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[199] K-134, PI-039, PI-104, SI-003, V-116, V-125.

[200] The right to life is protected under ICCPR, art. 6(1); CRC, art. 6; CRPD, art. 10; as well as in UDHR, art. 3 and ASEAN Declaration, art. 11. It is also protected under the Constitution of Myanmar, s. 353.

[201] See A/HRC/14/24, paras. 46(a) and (b).

[202] ICRC/Customary IHL, rule 47.

[203] E.g. ICRC, Commentary on the Additional Protocols, para. 4789, and ICRC/N. Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (ICRC, Geneva, 2009), pp. 75-76.

[204] DI-057, K-131, PI-043, PI-044, PI-047, PI-073, PI-087, QI-094.

Tatmadaw's failure to respect the prohibition of indiscriminate attacks, and its systematic failure to take precautions in attacks to protect the civilian population. The manner in which the Tatmadaw conducts military operations in civilian-populated areas necessarily results in civilian casualties.

144. As presented above, the Tatmadaw routinely targets civilians and conducts indiscriminate attacks. In many of the instances verified by the Mission, these have led to unlawful killings. In none of these cases was there any indication that the civilians were directly participating in hostilities, that the attack was directed at a military objective, or that sufficient precaution had been taken to minimize the impact on the civilian population.

145. For example, the Tatmadaw has shot at or shelled mortar directly at civilians, including women and girls,[205] while they were fleeing and seeking shelter, resulting in civilians being killed or injured.[206] A witness reported that on 11 August 2017 in the village of Kasung, Mogaung Township, in Kachin State, the Tatmadaw shot and killed his friend as he was trying to run away from approximately 200 Tatmadaw soldiers entering the village.[207] Another example is the killing of Ja Seng Ing, a 14-year old girl, by Tatmadaw soldiers on 13 September 2012 in Sut Ngai Yang village, Hpakant Township, Kachin State. She had sought shelter with her classmates after hearing an explosion detonated by the KIA. Tatmadaw soldiers stationed in the village started shooting as a response to the explosion. Soon after, two Tatmadaw soldiers standing close to where she was hiding shot directly at her and she was hit in the hip. She was severely injured and died as a consequence of the shooting and the denial of timely access to medical care.[208]

146. The Tatmadaw has also repeatedly launched mortar shelling and airstrikes on civilian residential areas across northern Myanmar, throughout the reporting period. Explosives have landed on or near civilian homes, in populated residential areas, including in IDP camps, killing and injuring villagers and destroying property. These attacks also resulted in burning of property and civilians were killed in these fires.[209]

Unlawful killings of persons while in Tatmadaw custody

147. Many killings reported to the Mission were committed while the victims were in the custody of the Tatmadaw.[210] The Tatmadaw often apprehended and detained men,[211] and then questioned them regarding their occupations and possible affiliations with armed groups, the whereabouts of members or bases of EAOs, or related matters. The questioning was often undertaken using torture or ill-treatment,[212] and the men were subsequently killed.

148. For example, at the end of June 2017, in Man Lan village, Namhsan Township, Shan State, the Tatmadaw detained and tortured a man suspected of being a member of the TNLA. When he denied this, he was repeatedly beaten. His corpse was found the next day with a TNLA uniform on.[213] Similarly, on 26 May 2017, in Mansi Township, Kachin State, the Mission corroborated that Tatmadaw soldiers executed three civilian displaced persons

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[205] K-131, PI-044, PI-047, PI-073.

[206] DI-057, DI-069 (2009), PI-043, PI-044, PI-047, PI-073, PI-087, QI-094.

[207] PI-044.

[208] K-131, PI-105, V-126; see this chapter, section C.3: Lack of recourse.

[209] DI-057, DI-061, DI-062, PI-044, PI-045, PI-053, PI-065; see this chapter, conduct of hostilities section; see this chapter, section A.8: Emblematic incidents (Tanai).

[210] DI-067, K-139, K-140, PI-034, PI-040, PI-041, PI-053, PI-054, PI-062, PI-074, PI-082, QI-086, QI-095, V-019, V-020.

[211] See this chapter, section A.5: Arbitrary deprivation of liberty and enforced disappearance.

[212] PI-062, PI-074, QI-089; see this chapter, section A.3: Torture and other ill-treatment; section A.8: Emblematic incidents (Tanai).

[213] K-134, PI-074, V-093.

in their custody. According to information received, the three men were killed because they were Kachin and as such suspected of being KIA members.[214]

149. The Mission received further credible and consistent accounts of civilian men, who have been apprehended and detained by the Tatmadaw, being found dead days or weeks later.[215] For example, a witness explained how his father was detained by the Tatmadaw on the suspicion of supporting the SSA-S in 2011 in Loilen Township, Shan State, and was found dead a week later in the forest:

> *In October or November 2011, at about midnight, the six Tatmadaw soldiers came to our home and detained my father. They also wanted to detain me, but I managed to escape. My father was accused of providing food and shelter to the SSA-S, although that was not true. They tied my father's hands with a rope and took him away. A week later, we had not received any news from him, so we searched for him in the jungle. We found his body at the bottom of a mountain. I did not see any bullet wounds; it appeared that he was beaten to death. His hands were still tied with a rope. I also found other bodies that day; there were two more next to my father's. All the people killed were just regular farmers.*[216]

150. Similarly, the Mission received credible reports of the killing of two residents of the Maing Hkawng IDP camp in Mansi Township, Kachin State, last seen on 31 January 2018 in the custody of the Tatmadaw. Their bodies were found in a grave on 8 March 2018 by local residents. Reports received suggest that the men were civilians, but they were found in KIA uniforms when their corpses were recovered.[217]

151. The Mission also received credible reports of the Tatmadaw capturing or detaining fighters of EAOs and subsequently killing them.[218] Those killed included men and women. For example, reliable reports suggest that, on 16 July 2018, Tatmadaw soldiers arrested six TNLA female medics and three TNLA fighters following clashes between the parties in Namkham Township, Shan State. It was reported that one TNLA male fighter was shot dead on the spot while two others were wounded and managed to escape. The bodies of the six women were found in a ditch nearby on 14 July 2018. Material examined by the Mission shows one corpse with a devastating head injury. The Mission's forensic analysis points to two possible causes: massive blunt force trauma or high velocity gunshot wound. Given the context the latter seems more likely. Multiple victims with single gunshot wounds to the head suggests execution style killings. The Mission also received reports of the women being raped before being killed but was unable to verify these allegations.[219]

152. Unlawful killings in Tatmadaw custody are also widespread in areas where there is no active fighting.[220] For example, one witness described the killing of his 25-year old brother on 15 July 2012, in a village near Myitkyina in Kachin State. He said:

> *On that Sunday evening, I went to the church service with my brother. A group of five Tatmadaw soldiers stopped us, and asked, "Where are you going and are you Kachin?" When we answered that we were Kachin, the soldiers started beating me. They punched me in the face. They confiscated our student IDs and asked where the KIA post was located, and where the KIA fighters were. We said that we did not know, but the soldiers did not believe us and took us to the military camp. There they tortured my brother with a heated knife, and they also tortured me. We were beaten with rifle butts. I was crying and screaming. They repeatedly asked us where the*

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[214] K-140, PI-040.

[215] K-139, PI-040, PI-082, PI-106, V-019; see this chapter, section A.5: Arbitrary deprivation of liberty and enforced disappearance.

[216] PI-082.

[217] K-139, V-019, V-020.

[218] K-141, PI-053; see this chapter, section A.3: Torture and other ill-treatment; section A.8: Emblematic incidents (Tanai).

[219] K-141.

[220] PI-040, PI-052, PI-070.

> *KIA post was. Then they stabbed my brother with a knife in front of me and he died. I closed my eyes because I could not watch my brother die. They told me to remain there and they carried my brother's body out of the room. I do not know where they took his body. The soldiers told me that if I ran away, I would be killed*[221]

153. Similarly, on 26 May 2017, in a government controlled area in Mansi Township, Kachin State, where there was no fighting, 15 to 20 Tatmadaw soldiers executed three Kachin civilian internally displaced persons of about 25 to 30 years old. The three bodies were found a few days later, buried together in a small shallow pit. These men were reportedly suspected of being KIA members.[222] On 29 May 2017, the three bodies were brought to Mansi Township hospital for post mortem analysis and were returned to the families in the afternoon. The Myanmar Police Force at Mansi Township opened a murder case. According to information received, the post mortem results show severe injuries on all victims, including multiple gunshot wounds, deep cuts on body parts, skull fractures and damage to eyes and ears. In January 2018, a Myanmar military tribunal sentenced six 319th Light Infantry Battalion[223] soldiers to 10 years in prison for the killing of these men.[224]

Killing of civilians during forced labour

154. The Mission also received many consistent accounts of men and women killed by the Tatmadaw in the context of forced labour.[225] Tatmadaw soldiers have intentionally killed individuals for trying to escape or for refusing to participate, or simply because they were unable to continue working.[226] The following examples are illustrative:

- A witness described the events in December 2016 that led to the killing of one of his neighbours in a village near Myitkyina in Kachin State. 15 Tatmadaw soldiers approached the plantation where he was working, together with three other villagers:

  The soldiers asked for our names, identification documents and some other basic information. Initially the situation did not seem too worrying. But then the soldiers told us that we needed to go and work for them. One of the men, my friend who was 28 years old, said he couldn't go because he had to look after his family. The soldiers became angry and threatened us. My friend tried to run away, but one of the senior officers shot him in the back and he fell. My friend died. Later, I saw the soldiers throw his body into the river. The soldiers threatened us that, if we did not do as they requested, they would shoot us like they had shot my friend.[227]

- Another witness explained that he saw how another individual was killed while they were both engaged in forced labour in May 2012, in Puta-O Township, Kachin State:

  We were forced to put up a fence, and to clean the surrounding area at a new military camp. Another villager found the work very difficult. He could not walk, was very tired, and he fell. The soldiers were very angry and told him to get up. Although he begged them not to kill him, he was shot in the head from close range and died.[228]

- In another case, in January 2017 in Muse Township, Shan State, a witness described an account of two villagers who were killed when they were no longer able to carry the heavy materials:

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[221] PI-052

[222] K-140, PI-040

[223] One of the organic units of the Northern Command

[224] K-140, PI-040; see this chapter, section C.3: Lack of recourse

[225] See this chapter, section A.6: Forced labour and forced recruitment of adults and children

[226] DI-057, DI-063, PI-077, PI-090, QI-078, QI-086, QI-095

[227] DI-063

[228] QI-078

> *More than 20 villagers were taken by the military for portering, to carry things for them. I heard after some returned 12 days later that they were not properly fed. Two villagers were taken for about one month. One villager who was not able to carry what he had been asked to, was beaten to death. Another villager who had become weak was shot and killed. I saw their bodies when I had to retrieve them.*[229]

Commonalities

155. In nearly all reports of unlawful killings received by the Mission, Tatmadaw soldiers were the perpetrators. In some cases, militia groups were also involved.[230] For example, on 1 March 2017, the Kachin Defence Army (KDA), working alongside the Tatmadaw, in Kutkai Township, Shan State, allegedly killed a 24-year old Ta'ang man and injured a number of others, apparently on suspicion of their membership in an armed group. The victim was shot in the back as he attempted to flee when the Tatmadaw and KDA entered the house, and was then stabbed. Other men were also wounded. The victim's body was found by his family at Lashio morgue a few days later.[231]

156. Victims and witnesses consistently describe how the Tatmadaw repeatedly targets individuals of the same ethnic background as specific armed groups.[232] When the Tatmadaw believes an individual belongs to or sympathizes with an EAO, it needs no proof beyond sharing the same ethnicity of that EAO. This specifically affects men between the ages of 18 and 40 years old, considered of fighting age.[233] In addition to the cases cited above, a witness recounted for example that her 21-year old husband was killed by Tatmadaw soldiers at the end of March 2016 in Manton Township, Shan State after the Tatmadaw intentionally shot multiple times at her house. She said her husband, who was Ta'ang, was suspected of being a member of the TNLA and that their house was targeted for that reason.[234]

157. The importance of the counter-insurgency justification for its actions against civilians appears to be borne out by the care taken by the Tatmadaw to disguise civilian victims as members of EAOs when killing them. Witnesses reported many cases where the bodies of civilian men were later found in uniforms of an EAO.[235] In one case, a source attested that her father, accompanied by another villager, was taken by the Tatmadaw on the way to their farm in Bhamo Township, Kachin State, in late January 2018. A month later, their corpses were found in a ditch, showing signs of bullet wounds and in KIA uniforms.[236]

158. Tatmadaw killings are often brutal.[237] For example, a witness reported that Tatmadaw soldiers beheaded his father and then burned his body, apparently on suspicion of collaborating with the KIA during the Northern Alliance offensive in Muse Township, Shan State on 6 December 2016.[238] Other witnesses reported that the Tatmadaw killed civilians in public and/or in front of their family members.[239] For example, a witness said that, on 18 September 2014, the Tatmadaw beat her father and the village administrator to death, because they were suspected of supporting Shan ethnic armed groups. The beatings occurred in the centre of their village, in Mong Hsu Township, Shan State, in front of

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[229] DI-057.

[230] PI-070, PI-054, PI-053, SI-004, V-018; see this chapter, section A.8 : Emblematic incidents (Tanai).

[231] PI-070.

[232] DI-067, PI-034, PI-040, PI-041, PI-053, PI-054, PI-065, PI-074, PI-090, QI-095; see this chapter, section A.8 : Emblematic incidents (Tanai).

[233] PI-040, PI-053, PI-054, PI-062, PI-065, PI-074, QI-095.

[234] PI-065.

[235] K-137, K-139, PI-074, PI-106, V-093, V-019, V-020.

[236] PI-106.

[237] PI-034, PI-041, PI-062, PI-074, PI-090.

[238] PI-041.

[239] PI-034, PI-052, PI-074, PI-090.

villagers and the families of the victims.[240] Another witness reported that her father was killed by the Tatmadaw in June 2011 in Puta-O Township, Kachin State, because he refused to agree to her marrying a Tatmadaw officer who she did not want to marry. Her father was beaten in front of his family so severely that his stomach burst and he died as a result of his injuries.[241] The mother of another victim reported that, while her son was being tortured and subsequently killed by Tatmadaw soldiers in a village of Namhsan Township, Shan State in late June 2017, she could hear her son crying out her name for help.[242]

159. The Mission received credible reports of the Tatmadaw committing mass killings in conflict prone areas in northern Myanmar. In one reported incident, the Tatmadaw detained at least six women and five men on 25 June 2016 in Long Mon village, near the sub-Township of Mong Yaw, Shan State, after hostilities erupted between the Tatmadaw and the TNLA. Seven bodies were later found in shallow graves. In July 2016, a Tatmadaw senior general admitted publically that five villagers had been killed by the Tatmadaw during interrogation and that the perpetrators would be brought to justice.[243] Similarly, reports suggests that a mass grave containing the remains of 18 villagers, including a two-year old boy, was discovered in a forest near the Kokang village of Mung Lung Nam Hkye Ho in Monekoe Township, Shan State, on 20 December 2016 during fighting between the Northern Alliance and the Tatmadaw.[244] Accounts indicate that the bodies were badly burned before they were buried. The 18 villagers were reportedly detained by the Tatmadaw on 28 November 2016.[245]

3. Torture and other ill-treatment

160. Similar patterns emerged for cases of torture and other forms of ill-treatment, often against women and children, not only men, to obtain information or confessions regarding the activities of EAOs, or as punishment for perceived sympathy for the Tatmadaw's opponents. Torture and ill-treatment were also used to coerce individuals into forced labour. Conditions of detention often amounted to ill-treatment.

(a) Legal framework

161. Torture and cruel, inhuman and degrading treatment are prohibited under international human rights law[246] and under international humanitarian law.[247] The prohibition of torture is absolute: as a peremptory norm of international law (*jus cogens*), it can never be subject to derogation or exception, that is, it cannot be limited or repealed.[248]

162. Under international human rights law, torture is defined as acts that cause severe pain or suffering, whether physical or mental; are inflicted intentionally; are committed for a specific purpose; and involve a public official, either directly or indirectly.[249] Acts considered to amount to "severe pain or suffering" for the purpose of the definition include: severe beatings, punches and kicks; rape, attempted rape and other forms of sexual violence; electric shocks; deprivation of sleep, food or water; and administration of substances against the will of a person deprived of liberty.[250] Examples of treatment causing

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[240] PI-034.

[241] PI-090.

[242] PI-074

[243] V-021, V-022; see this chapter, section C.3: Lack of recourse.

[244] From the 88th and 99th LIDs.

[245] V-131, V-132.

[246] UDHR, art. 5; ICCPR, art. 7 and 10; CAT; CRC art. 37(a); ASEAN Declaration, art. 14. Torture is also prohibited under the Myanmar Penal Code (s. 330-331), although the definition is not fully in line with international law.

[247] Common Article 3 of the Geneva Conventions prohibits "cruel treatment and torture" and "outrages upon personal dignity, in particular humiliating and degrading treatment" of civilians and persons *hors de combat*. See also ICRC/Customary IHL, rule 90.

[248] ICCPR, art. 4(2); CAT, arts. 2(2) and (3).

[249] CAT, art. 1, see also A/HRC/13/39/Add.5, paras. 30-39.

[250] For further examples, see A/HRC/13/39/Add.5, para. 51.

mental suffering includes: mock executions, abuse of specific personal phobias, prolonged solitary confinement and threats of death or violence.[251] To constitute torture the acts must be committed directly by public officials or other persons acting in an official capacity, or be ordered or tolerated by them[252] for a specific purpose, such as extracting a confession, obtaining information, punishment, intimidation, humiliation, coercion or any reason based on discrimination.[253] Acts which fall short of this definition may still constitute cruel, inhuman or degrading treatment or punishment (ill-treatment), which is also prohibited under international law.[254] The absence of the element of purpose is the key distinguishing factor between torture and ill-treatment.

163. Under international humanitarian law, the definition of torture does not require that the pain or suffering be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

(b) Findings

Principal victims

164. The Tatmadaw tortured men suspected of being members or supporters of EAOs, or who had participated in military operations. Torture victims were usually men between the ages of approximately 18 and 40 years, considered able to participate in fighting.[255] However, older men, often village administrators or community leaders, were also accused of associating or collaborating with EAOs and subjected to torture.[256] Torture victims usually belonged to the same ethnic group as enemy fighters with whom the Tatmadaw was engaged in conflict.[257] Women were also targeted by the Tatmadaw, and raped or subjected to other forms of sexual violence as a method of torture.[258]

165. In a typical example, a 23-year old male victim reported that he was tortured by Tatmadaw soldiers for three days at a military camp in March 2016 in Kutkai Township, Shan State. He was Ta'ang and was accused of being a member of the TNLA, who are of the same ethnic group. He was detained with 18 other Ta'ang men. He was repeatedly beaten all over his body with a rope and a piece of firewood, and was burned with cigarette stubs. Tatmadaw soldiers also poked his neck with a knife, making small cuts. The other detainees were also tortured.[259]

166. While most torture victims were adults, the Mission also received information on the torture of children.[260] One individual stated that, when he was 14 years old, in 2013, two Tatmadaw soldiers beat him inside the monastery where he lived in Kyauyme Township, Shan State. They used rifle butts to beat him, and interrogated him on the whereabouts of his brother. The brother had deserted the Tatmadaw after he had been forcibly recruited by them.[261]

167. Information was also received of elderly persons being subjected to torture and ill-treatment. For example, Tatmadaw soldiers tortured a man over 60 years old on 9 August 2017 in Kutkai Township, Shan State. The man, who was living in a camp for internally

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[251] United Nations Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para. 6; Communication No. 74/1980 *Estrella v Uruguay*, Views adopted by the Human Rights Committee on 29 March 1983, paras 1.6, 10; see also A/56/156, para. 8.

[252] CAT art. 1; United Nations Human Rights Committee, General Comment No. 20, para. 2.

[253] These purposes of torture are expressly listed in CAT, art. 1. See also A/HRC/13/39/Add.5, paras. 35 and 58-71.

[254] ICCPR, art. 7; CAT, art. 16; see also E/CN.4/2006/6, para. 35.

[255] DI-066, PI-062, PI-079, PI-109, QI-089.

[256] DI-067, PI-035, PI-038, PI-111.

[257] DI-066, PI-062, PI-079, PI-109, PI-111, QI-089.

[258] See this chapter, section A.4: Sexual and gender-based violence.

[259] PI-109.

[260] QI-079, QI-094.

[261] QI-079.

displaced persons, was suspected of being a messenger for the TNLA.[262] The victim was tortured for more than 24 hours at his place of employment, and later at a military base near his village where he was transferred blindfolded. The Tatmadaw soldiers asked him where the messengers for the TNLA were and beat him severely, causing the victim to lose some of his teeth. The victim was also tied-up with rope and had hot wax poured on him. The soldiers made the man kneel for hours on small sharp stones during questioning, broke his arm and forced him to sleep on the injured arm overnight.[263]

168. Similarly, reliable sources have confirmed that a community leader in his sixties was tortured at a military camp near Muse town before being transferred to a prison in Shan State in late 2017. At the military camp, the elderly victim was offered little food for several days and severely beaten. Soldiers also placed dogs in his cell to terrify him. The Tatmadaw soldiers wanted the victim to admit that he was a KIA supporter.[264]

169. Village administrators and community leaders were also tortured because they were often the only individuals able to speak Myanmar language.[265] For example, on 10 January 2016 in Kunhing Township, Shan State, a victim reported that Tatmadaw soldiers detained him with another civilian and the village administrator in a monastery. The Tatmadaw and the TNLA had been fighting in the area. Their hands were tied behind their backs, and the Tatmadaw soldiers slapped them on the face and hit them on their chests. They also poked them in the neck with a sharp knife. They were interrogated about the whereabouts of the TNLA. One Tatmadaw soldier also threatened them: "if you do not tell us where the TNLA men are, you will die and dig your own grave".[266]

Perpetrators

170. Tatmadaw soldiers were identified as perpetrators in most of the accounts of torture in northern Myanmar verified by the Mission.[267] In some cases, they were accompanied by militias (Pyi Thu Sit),[268] or the Myanmar Intelligence Office (commonly referred to by its Myanmar acronym SaYaPa),[269] the branch of the Myanmar armed forces tasked with intelligence gathering. All accounts of sexualised torture reported in the context of detention were perpetrated by the SaYaPa.[270]

171. Most torture cases were committed by Tatmadaw soldiers during military operations, patrols or forced labour. For example, a victim said that soldiers tortured him in Shan State in 2012. He was taken by Tatmadaw soldiers to their military camp along with three other men. They were beaten and questioned about their connections with Shan EAOs. The soldiers requested money for their release which was paid by the victim's family members.[271]

172. Another victim described how the Tatmadaw detained and tortured him while he was fishing at a river next to his village in Tanai Township, Kachin State in December 2017. At that time, the Tatmadaw had arrived at the victim's village in large numbers. The victim was later taken to the military camp for the purpose of forced labour. He said:

> *Ten Tatmadaw soldiers suddenly surrounded me and asked, "What are you doing in the forest?" I answered that I was a simple villager and wanted to fish. They did not believe me because I am young, 26-years old. They beat me with a bamboo stick, and also rolled the stick on my thighs which really hurt. They asked, "Are you a rebel?" I answered again that I simply work for my daily wages to survive, and that I had never joined the KIA. They took me to their army base where I was held*

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[262] PI-035.

[263] PI-035.

[264] K-147.

[265] DI-067, PI-035, PI-038, PI-111.

[266] PI-111.

[267] PI-038, PI-044, PI-054, PI-079, QI-090.

[268] PI-053, PI-054, PI-056, SI-004; see this chapter, section A.8: Emblematic incidents (Tanai).

[269] PI-052, PI-055, PI-056.

[270] PI-052; PI-056; PI-055; see this chapter, section A.4: Sexual and gender-based violence.

[271] QI-090.

> *captive for over a month. We moved from one base to another, and I was beaten regularly. Every morning, the Tatmadaw soldiers woke me up very early, beat me and forced me to do various tasks. I slept on the ground in the jungle without a blanket, I was always cold at night.*[272]

173. Torture and ill-treatment were also perpetrated by the SaYaPa. For instance, a victim described how he was tortured by the SaYaPa in June 2012, for approximately a week, at the SaYaPa office in Myitkyina, Kachin State. He was subsequently accused of associating with the KIA, pursuant to the Unlawful Association Act section 17(1). He said that the SaYaPa tortured him, and forced him to say that he was a KIA member:

> *SaYaPa agents tortured me for about a week. They insisted that I was a KIA member. I kept on repeating that I wasn't, but they tortured me more. They burned me on the stomach with a hot knife, and poured hot wax from a candle on my face. They made me eat stones and burned my arms with cigarette butts. They also made me kneel on top of small stones for hours. They took two bamboo sticks and tied them in between my legs. They stabbed me in the thighs with a knife. I have 15 scars on one leg and five scars on the other. They took turns to kick me in the chest. They tied me to a chair, and beat me with a bamboo stick. I felt numb from the pain at some point. My vision was blurred because I was beaten repeatedly. They also pushed on my eyeballs for a long time – I felt like they would pop out. I really thought I was going to be killed. They dug a hole behind the SaYaPa office and I thought they would throw my corpse in it. So, I finally said that I was a KIA soldier.*[273]

Purposes

174. Torture and ill-treatment were used either to obtain confessions that the victim was a member of an EAO, or to elicit information related to hostilities, for example about the locations, weapons, and movements of fighters.[274] Some victims were tortured while in the custody of Tatmadaw soldiers or the SaYaPa prior to, or frequently after, being detained under the Unlawful Association Act, section 17(1).[275]

175. For instance, a victim reported that he was detained and tortured by Tatmadaw soldiers on 2 December 2016 on suspicion of detonating an explosive on behalf of the TNLA in Namhsan Township, Shan State. He said:

> *I was collecting wood in the forest when the Tatmadaw detained me. They beat me until I was bleeding from the nose and ears. They asked, "Why are you here, what are you doing?" I answered that I was collecting wood. The soldiers then tied-up my hands behind me with a rope. I was taken with other villagers to a small hut in the village, used as an army post. They kicked me in the head and accused us of collaborating with the TNLA and to have detonated an explosive. The Tatmadaw commander said that all people of Ta'ang ethnicity were TNLA. I told him I was just an ordinary man, a tea farmer.*[276]

176. Another victim gave an account of being tortured by Tatmadaw soldiers, along with 15 other civilians including four village administrators, on 15 December 2015 in Sumprabum Township, Kachin State. The Tatmadaw and KIA were fighting in and around his village when the civilians were apprehended by soldiers on suspicion of being KIA members and taken to the military camp located nine miles away from his village. They were kept in the military camp for one week, tortured and ill-treated. The torture included death threats and beatings. He said:

> *We were tied-up with our hands behind our backs and we had to stand outside the military tents. We were interrogated repeatedly and accused of being KIA members.*

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[272] PI-079.

[273] PI-055.

[274] PI-059, PI-074, PI-075, PI-109, PI-111.

[275] PI-038, PI-052, PI-055, PI-056; see this chapter, section A.5: Arbitrary deprivation of liberty.

[276] PI-075.

> *They insulted us constantly. The Tatmadaw said, "We are questioning you, and if you do not answer, we will kill you". I responded that I was not a KIA member and we were simple villagers. They retorted, "You have to be a KIA soldier!" Every day, for a week, they asked us the same questions and we responded in the same manner, and we were beaten.*[277]

177. In other instances, torture and ill-treatment were instrumental in punishing and dehumanizing members of ethnic minorities in Shan and Kachin States. The Tatmadaw verbally denigrated their religions and ethnicities during torture sessions.[278] For example, one victim who was detained for a month from 16 June 2012 said:

> *The SaYaPa agents asked constantly if I was responsible for explosives that were planted in the Myitkyina area. Because I am Christian, they made me imitate Jesus on a cross like the crucifixion. We were treated like animals because they look down on Kachins.*[279]

178. In some cases, the Tatmadaw tortured civilians as retribution for battlefield casualties inflicted against them by the EAOs.[280] Many civilians were also tortured or ill-treated to force them to work for the Tatmadaw. This included children. Many victims reported that the Tatmadaw apprehended them in or near their village in Shan and Kachin States.[281] They were tortured and/or ill-treated and thereafter forced to work for the Tatmadaw. Other forms of torture or ill-treatment were also perpetrated while they were detained for forced labour.[282]

179. For example, a 16-year old child at the time of the incident reported that he was tortured and ill-treated by Tatmadaw soldiers and then coerced into forced labour during three days in June 2011 in Waingmaw Township, Kachin State. Most civilians from his village had fled from the fighting, while he remained behind with approximately 10 other villagers. The child mentioned that soldiers questioned the men and when they were not satisfied with the answers the victims were beaten more. One soldier hit the child with the butt of his gun and he lost a tooth. Tatmadaw soldiers forced the 10 men and child to dig holes and carry heavy packs. On the first day, they were not given food or water to drink. They were given small portions of food and some water only in the middle of the second day.[283] Another adult victim gave an account of how the Tatmadaw ill-treated and subjected him to forced labour for three days at the beginning of August 2011 in Kunhing Township, Shan State. He stated that the Tatmadaw arrived at his village and asked the residents if they had seen members of the Shan ethnic armed organizations. The Tatmadaw subsequently detained and beat the victim, along with other civilians, and forced him to carry heavy material. He was not fed properly and he was kicked and punched when he did not walk fast enough.[284]

Methods and techniques

180. The Mission received accounts of the Tatmadaw using various torture techniques. The following techniques have been corroborated:

- beating with a bamboo stick or metal rod;[285]
- laying bamboo across the shins of the victim, and standing or jumping on it;[286]
- tying up hands and/or feet with ropes;[287]

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[277] DI-067.

[278] PI-038, PI-056, PI-074, PI-075.

[279] PI-056.

[280] DI-066, PI-044, PI-086, PI-088, see this chapter, section A.8: Emblematic incidents (Tanai).

[281] QI-085, QI-094, QI-098.

[282] See this chapter, section A.6: Forced labour and forced recruitment of adults and children.

[283] QI-094.

[284] PI-083.

[285] PI-053, PI-055, PI-056.

[286] PI-056, V-133.

- beating on several parts of the body;[288]
- hitting on the head with the butt of a firearm;[289]
- pointing a firearm at their temple;[290]
- blindfolding;[291]
- using death threats, instilling a justified fear of being killed; [292]
- killing other detainees in front of victim;[293]
- performing sexual violence, including rape;[294]
- using insults of an ethnic or religious nature; [295]
- burning the skin with a hot knife or cigarette stubs;[296]
- pouring hot wax on skin;[297]
- forcing nudity, fully and partially;[298]
- forcing to kneel several hours on the ground, sometimes on stones;[299]
- jabbing the skin with a needle or sharp knife;[300]
- making victims dig their "own" graves;[301] and
- placing dogs inside or outside a cell to terrify the victim.[302]

181. The Mission received credible reports of other torture techniques, requiring further investigation.

182. Perpetrators often used many of these torture techniques simultaneously. For example, a victim mentioned that he was detained and tortured on 12 June 2012 at a monastery in a village near Myitkyina in Kachin State. He was suspected of being a KIA member:

> *I was questioned by many Tatmadaw soldiers from Light Infantry Division 37. They asked me my ethnicity and where I was from. The soldiers said that villagers from my native village are all members or supporters of the KIA. I responded that I was never a KIA member. They insisted and wanted me to admit by force that I was with the KIA. The soldiers kicked me in the stomach and on the chest, and slapped me in the face. I was beaten on the head with the butt of their guns. I was hit so many times on the head and on my ears that I could not hear anymore and my face was very swollen. They hit me on the head with a wooden stick until the stick broke. They took my legs and placed them in between two bamboo tree trunks and then jumped on my legs attached to the trunks until I could not walk anymore. I had to be*

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[287] DI-066, PI-035, PI-044, PI-053, PI-054, PI-074, PI-075, SI-004.

[288] DI-066, PI-035, PI-038, PI-044, PI-053, PI-054, PI-055, PI-056, PI-074, PI-075, PI-109, QI-090, SI-004.

[289] PI-035, PI-038, PI-044, PI-056.

[290] DI-066, PI-086.

[291] PI-035, PI-054, V-137.

[292] DI-068, PI-035, PI-038, PI-054, PI-055, PI-059, PI-062, PI-111.

[293] PI-062, SI-004.

[294] PI-052, PI-055, PI-056, PI-066. See this chapter, section A.4: Sexual and gender-based violence.

[295] PI-038, PI-056, PI-059, PI-074, PI-075.

[296] PI-055, PI-056, PI-109.

[297] PI-035, PI-055.

[298] DI-066, PI-052, PI-056.

[299] DI-066, PI-035, PI-055.

[300] PI-056, PI-109, PI-111.

[301] PI-055, V-133.

[302] PI-037, PI-038.

> *dragged out by soldiers. I spent two nights and three days at the monastery being tortured.*[303]

Locations

183. Victims reported that the torture and ill-treatment took place in various places, including in the SaYaPa office in Myitkyina,[304] but mostly in their own towns or villages in locations including houses, forest areas,[305] monasteries,[306] military camps,[307] as well as official places of detention.[308] Most torture took place in or near villages and towns.

184. Usually, the torture ceased when the victims were transferred to official detention locations.[309] For example, a victim mentioned the torture stopped when he was transferred to Myitkyina prison from the SaYaPa office in Myitkyina, Kachin State in July 2012.[310]

185. Torture also often took place in military camps. A victim reported that he was tortured while detained at a military camp in Mogaung Township, Kachin State, in August 2017 shortly after the Tatmadaw's incursion in the Kasung region. The victim reported that he was apprehended by the Tatmadaw under suspicions of being part of the KIA. He said:

> *I was taken to the military base and tortured by two soldiers for three days. We were a group of ten civilians detained together, and there were 20 soldiers surrounding us. I was beaten all over my body, especially on my back and chest. The Tatmadaw tied my hands together behind my back with a rope. They also laced a rope around my neck. They asked me, "Are most people in the village KIA members?" I answered that there were simple farmers. They repeatedly asked who in the village was KIA and beat me more. The soldiers who were beating me told me that all Kachin men are KIA. The Tatmadaw did not want to understand that we were villagers. They also beat me with the butt of their guns and showed me a sword to scare me. They took a KIA uniform and forced me to wear it. I never admitted that I was a KIA and kept on repeating that I was an ordinary man.*[311]

Ill-treatment while in detention

186. The detention conditions in which civilians, including men, women and children, were held, while in the custody of the Tatmadaw, amount to ill-treatment. Detention conditions in formal and informal detention locations were sub-standard.[312] Victims systematically reported that they were given very little food, had no contact with their families and had no access to health care.[313]

187. The Mission also received a reliable and consistent body of information pertaining to inhuman conditions in forced labour settings, either at military camps or while the Tatmadaw was moving their base of operations. Victims included children. Victims mentioned that they were beaten when walking too slowly as porters, or because they were too weak. In addition, civilians in the custody of the Tatmadaw for forced labour consistently stated that they ate insufficiently and felt hungry, rarely had access to adequate drinking water, slept on the ground with no blanket and felt cold, and received death threats. Victims were also subjected to sexual violence, including rape, gang rape and

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[303] PI-056.
[304] PI-052, PI-055, PI-056.
[305] DI-066, PI-035, PI-074, PI-075, PI-086, PI-088.
[306] PI-056, PI-074, PI-111.
[307] PI-035, PI-038, PI-044, PI-052.
[308] PI-038, V-133.
[309] PI-052, PI-109.
[310] PI-052.
[311] PI-044.
[312] See this chapter, section A.5: Arbitrary deprivation of liberty and enforced disappearance.
[313] DI-060, PI-035, PI-052, PI-055, PI-056, PI-013.

threats of being raped, while being detained for forced labour.[314] The following are illustrative examples:

- A survivor reported that 12 Tatmadaw soldiers came to her house in Myitkyina Township, Kachin State, in 2012 and threatened to take her mother away if she did not go with them. She spent six to seven months performing forced labour in a military camp near her village. On one occasion, she was raped by a senior officer with another soldier watching. On another night, soldiers told her to drink juice that caused her to lose consciousness. She woke up without underwear next to a sleeping soldier, with pain in her back, anus, vagina and thighs. A week later, she was taken to the same senior officer but escaped before another rape was committed.[315]

- A girl who was 14 years old at the time of the events reported that the Tatmadaw detained her for forced labour for three or four days at a military camp near her village in Mongkaung Township, Shan State in 2011. She had to carry heavy bags and was not properly fed nor had access to enough drinking water. One day she was beaten on her legs because she asked a soldier for water.[316]

- Another victim reported that in October 2011, in Waingmaw Township, Kachin State, he was taken by the Tatmadaw to forcibly work as their porter. He reported:

  They chained our ankles. We walked for five days carrying very heavy packages. The Tatmadaw told us to walk faster and they slapped us, kicked us from behind. When we were thirsty, we were not given enough water, and sometimes we could not drink at all. We were often beaten with rifle butts and punched.[317]

- Another victim reported the humiliating and dehumanizing ill-treatment inflicted on him by the Tatmadaw while in their custody for forced labour. He was apprehended on 15 November 2014 in Kutkai Township, Shan State. He said:

  We walked the entire night. We stopped and rested for breakfast the next morning, although I remained tied-up. After breakfast, the Tatmadaw poured the inedible leftovers on a plate and asked us if we were hungry – two other civilians were detained as well. The soldiers said to eat and "since you are a rebel, you do not have to eat". The soldier said, "Oh, this disgusts you?" I said yes, and the soldier said, "Even a rebel won't eat this?" And then they started beating me again. One of the soldiers spat on the food and then so did the others. Then they pointed a gun at my head and said "If you don't eat, we will kill you." So, I ate the food. The Tatmadaw laughed at me as I ate. After breakfast, they packed up and moved on. One soldier said, "Let's also get this rebel to carry our things". Later, we stopped and rested by a narrow stream and one of the soldiers made me drink muddy water. He said "You are a rebel, not a human, you should do what the animals do."[318]

- Another victim provided a detailed account of the ill-treatment he suffered while taken for forced labour by the Tatmadaw in late May 2014 in Manton Township, Kachin State:

  We were all required to carry very heavy burdens. We walked for three hours and then reached a village on a hill. Those who didn't do this well were beaten by the soldiers. We were kicked and slapped on the head. They hit me from behind with a rifle butt, and pushed me to walk faster. We spent the night in that village and we were chained up by our legs. We were not given any food. We could just use our hands to drink from streams on the route, but that night we were not given water.[319]

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[314] DI-063, DI-065, DI-071, PI-001, PI-021, PI-067, PI-068, PI-077, PI-080, QI-079, QI-080, QI-085, QI-094, QI-095, QI-096, QI-097, QI-098; see this chapter, section A.4: Sexual and gender-based violence; section A.6: Forced labour.

[315] PI-068.

[316] DI-071.

[317] QI-097.

[318] QI-096.

[319] QI-098.

4. Sexual and gender-based violence

188. The Mission found that the Tatmadaw has targeted civilians, especially women and girls but also men. Women have been subjected to abduction, rape, including gang rape, and other sexual violence. There are also credible reports of forced marriage and sexual slavery. In many cases, sexual violence was accompanied by degrading behaviour, including insults and spitting. When women did escape, Tatmadaw soldiers would frequently search for them, threaten and physically abuse their family, and destroy or steal their property. Sexual violence against men has been inflicted as a means of torture, including to obtain information or confessions from detainees.[320]

189. The findings in this section are based on 38 interviews with survivors, families of survivors, eyewitnesses, and expert witnesses. The prevailing context of insecurity in northern Myanmar, combined with culturally based stigmatisation and ostracism of sexual violence survivors, and the continuing presence of the military and armed groups, suggest significant underreporting.[321]

(a) Legal framework

190. Sexual violence is conduct of a sexual nature that is perpetrated without a person's consent, often by force or coercion. Under international human rights law, such conduct may violate the right to security of the person, the right to be protected from torture and other ill-treatment, and other rights enshrined in international treaties. Rape, which consists of sexual penetration without consent, is one form of sexual violence. Acts falling within the category of other sexual violence include: attempted rape; forced prostitution and trafficking for the purpose of sexual exploitation; sexual slavery; forced marriage or cohabitation; forced pregnancy; forced abortion or sterilization; violent acts against the sexual integrity of a person and other acts of a sexual nature that cause offence or humiliation (for example, forced public nudity, demanding sex in return for favours, sexual harassment).[322]

191. Rape and other forms of sexual violence are also prohibited under international humanitarian law.[323] Depending on the circumstances, such acts may constitute war crimes, crimes against humanity or genocide.[324]

192. Violence against women and girls, including sexual and gender-based violence, is also a form of discrimination prohibited by the Convention on the Elimination of All Forms of Discrimination against Women and is a violation of human rights.[325] The obligations of States parties, including Myanmar, do not cease in periods of armed conflict.[326] States parties have a due diligence obligation to prevent, investigate, prosecute and punish acts of sexual and gender-based violence.[327]

193. A limited number of legal protections from sexual and gender-based violence exist in Myanmar domestic law. The Constitution guarantees equality before the law,[328] freedom from discrimination on grounds of gender,[329] and a prohibition of trafficking and

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[320] See this chapter, section A.3: Torture and other ill-treatment.

[321] See also A/HRC/31/71, para. 48.

[322] See e.g. ICC Elements of Crimes, art. 7(1)(g).

[323] See Common art. 3 of the Geneva Conventions (prohibiting "violence to life and person" including cruel treatment and torture and "outrages upon personal dignity"), and ICRC/Customary IHL, rule 93.

[324] See ICC Statute, arts. 7(1)(g), 8(b)(xxii), 8(c)(ii), 8(e)(vi); ICC Elements of Crimes, art. (6)(b) para. 1.

[325] United Nations Committee on the Elimination of Discrimination against Women, "*General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*" (CEDAW/C/GC/30), para. 34; "*General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*" (CEDAW/C/GC/35), para. 21.

[326] United Nations Committee on the Elimination of Discrimination against Women, "*General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*" (CEDAW/C/GC/28), paras. 11-12.

[327] E.g. CEDAW, General Recommendation No. 30, para. 15, 23.

[328] Constitution of Myanmar, s. 347.

[329] Constitution of Myanmar, s. 348.

enslavement.[330] The Penal Code, enacted in 1860, prohibits rape and other forms of sexual assault, though the definition of rape is outdated and legally vague and does not meet international best practice standards. Penal Code provisions criminalising "kidnapping, abduction, slavery and forced labour" are piecemeal. For example, the prohibition of the importation of women for the purposes of sexual exploitation is only applicable if the woman is under the age of 21.

(b) Findings

Abductions, rape and sexual violence by the Tatmadaw

194. The Mission found a pattern of individual Tatmadaw soldiers or groups of them abducting women and girls and raping, attempting to rape, or gang raping them in forests. Parents, relatives and neighbours reported that they saw women and girls being forcibly taken by the Tatmadaw and, in some cases, saw or learned from others they had been killed.[331]

195. For example, a female victim recounted that in 2017, when she was 15-years old, she was sexually assaulted by a Tatmadaw soldier while cutting grass near her home in Tanai Township, Kachin State. She stated that other girls experienced similar sexual assault, including a friend who told her that she was raped.[332]

196. On 20 February 2018, one woman reported being abducted near Nam Byu village in the amber mining area in Tanai Township by five soldiers on her way, and forced to walk two hours into the forest to meet with a more senior officer. When she refused to take off her clothes, three soldiers forcibly undressed her while two soldiers stood guard. The senior officer raped her while insulting her, telling the other officers, "I will take her first and then you can have her" and telling the victim, "I will fuck you to death". The victim believed she was targeted because she was Kachin and the Tatmadaw soldiers look down at the Kachin people because of their different history, religion and language. [333]

197. A survivor in Kutkai Township, Shan State, was abducted with her mother from her farm and raped in the forest in 2011. Two Tatmadaw soldiers guarded her while another soldier took her inside an abandoned hut and raped her. During the abduction and rape, the survivor was also accused of supporting TNLA soldiers:

> *They pointed their guns at our heads, and they said that we had told the TNLA about the position of the soldiers, and because of that, the TNLA had taken their horse. There were about five or six Burmese soldiers. Then they took me to their military base. On the way there, three soldiers took me to a small hut in the jungle. They asked me, "Why did you pass the message to the TNLA?" I told them that I did not, but they didn't believe me and slapped me. One soldier told the other two to wait outside. He then raped me on the floor on a dry grass mattress. He ripped all my clothes off, so I was completely naked.*[334]

198. Another survivor from Kutkai Township, Shan State, was abducted from her farm in September 2012 by five Tatmadaw soldiers bearing guns. She was forced to work as a porter and cook for the soldiers during the day. One night the senior officer asked her for a massage and then took his clothes off and attempted to rape her. The survivor was able to push him off and escape even though soldiers fired guns in her direction.[335] Another survivor from Kutkai was abducted from her house in 2011 by Tatmadaw soldiers who destroyed her shop before forcing her to carry heavy items to a military base. She and

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[330] Constitution of Myanmar, s. 358.

[331] PI-003, PI-004, PI-007, PI-029, PI-067, PI-069, PI-089, PI-096.

[332] PI-063.

[333] PI-069.

[334] PI-066.

[335] QI-084.

another woman were able to escape that night after the soldiers had told the women they would have to have sex with them.[336]

199. Several witnesses across both Kachin and Shan States saw sexual abuse and rape committed in military bases[337] or in the jungle.[338] One witness described seeing 20 soldiers surrounding two girls aged about 15 to 16 years old in the jungle in December 2017, in Tanai Township, Kachin State:

> *The soldiers were punching and slapping them. They pulled their hair. They pushed them on the ground and tore off their clothing. The girls were naked on the ground.*

200. The witness ran from the scene in fear and later learned that villagers had found the bodies of the two girls.[339]

201. Other witnesses personally knew women who had been taken away by the military,[340] women who had been raped, sometimes by several soldiers at once,[341] and women who had fallen pregnant as a result of the rape,[342] or had been killed after the rape.[343] For example, in 2011, one source who was forcibly recruited for labour by the Tatmadaw in Kunhing Township, Shan State, witnessed three Tatmadaw soldiers force a husband to work as a porter while they took his wife to the forest and raped her.[344]

Rape and sexual violence in the home

202. There are consistent accounts of Tatmadaw soldiers, either individually or in groups, attempting to rape women and girls in their homes.[345] Women who were raped in their homes or following abduction recognized the Tatmadaw insignia and the military uniforms.[346] One survivor in Lashio Township in Shan State described how, in 2012, when there was fighting between the KIA and the Tatmadaw in her area, a group of soldiers entered her house, killed her parents and raped her:

> *I was beaten with belts and knives. Both my parents were killed. They were tied up and burned. Their house was set on fire by five soldiers. They took me outside the house to rape me. I was taken by one man with three stars on his badge to the back of the house. He beat me with the butt of his gun and a belt. They wanted money and were not happy because my family was Christian. The soldier ripped my shirt and cut my trousers with a knife. Under the banana tree, he raped me on the ground. He inserted his penis in my vagina and my anus. He inserted a banana leaf in my mouth to make me stop screaming. I heard, "If you don't keep quiet, I will shoot you with my gun".*[347]

203. In another case, on 16 March 2016 in Kutkai Township, Shan State, a Tatmadaw soldier grabbed a victim when visiting her home to buy a chicken. She told him she was three months pregnant and asked him not to rape her. She escaped but he threatened to

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[336] PI-023.

[337] PI-025, PI-029.

[338] PI-029, PI-083, PI-099.

[339] PI-069.

[340] PI-096, QI-078.

[341] PI-068, QI-072, QI-082, QI-086, QI-089.

[342] PI-069, QI-082, QI-098.

[343] PI-069, QI-079.

[344] PI-083.

[345] PI-005, PI-037, PI-057, PI-110, PI-117; see also Shan Human Rights Foundation (SHRF), *Update by the Shan Human Rights Foundation* (April 2016); SHRF, *Update by the Shan Human Rights Foundation* (November 2015); Ta'ang Women's Organization, *Trained to torture: Systematic war crimes by the Burmese Army in Ta'ang areas of Northern Shan State* (March 2011-March 2016); SHRF, *Summary of HR violations committed by Burma Army troops during military offensive in Tang Yan, Shan State, from 14-15 April 2013* (April 2013); Kachin Women's Association Thailand, *State of Terror in Kachin Hills* (February 2013).

[346] PI-003, PI-004, PI-005, PI-007, PI-067, PI-068, PI-069, PI-089, QI-082.

[347] PI-117.

return the following day. She reported the incident to the village administrator but she later learned that Tatmadaw soldiers had beaten him to prevent an official report being filed.[348]

204. The Mission verified a well-publicised case involving two volunteer Kachin teachers, Maran Lu Ra, and Tangbau Hkawn Nan Tsin, who were attacked at home in Kawng Kha Shabuk village in Kutkai Township, Shan State on 19 January 2015, the night that over 40 Tatmadaw soldiers arrived in the village. A couple staying nearby heard shouts at 1am in the morning, but there was no response when they knocked on the teachers' door so they left. Other villagers saw several Tatmadaw officers picked up by a vehicle and leave the village approximately four hours later. The two teachers' bodies were discovered later that morning, naked from the waist down, lying on the bed in their home in pools of blood, with blood flowing from their vaginas. A military badge was found on the bed, but no forensic evidence of the crime scene was collected by authorities. Later that day, the Tatmadaw Major staying in the village threatened to "use machine guns on the school" and "burn down the village" if the Tatmadaw was accused of the crimes.[349]

205. According to a source interviewed by the Mission, the doctor who examined the two bodies at Muse hospital provided two contradictory medical reports. The first report concluded that approximately four perpetrators were involved in the rape and murder of the two teachers. The second report concluded that there were only two perpetrators, only one of the women was raped, and the military were not involved.[350] Forensic analysis conducted by the Mission however suggests that the first victim was attacked with a knife initially and raped, then or simultaneously stabbed, after which she was bludgeoned as a final act. The second victim was initially assaulted with a knife, resisted and was repeatedly stabbed and cut leading to death from haemorrhage; there is no disturbance of clothing from the material analysed to indicate a completed rape.

206. The police investigation stalled before any court proceedings were initiated. The Tatmadaw has prevented any questioning of its officers and has publicly declared it will take legal action if its officers are accused by representatives of the victims.[351]

Sexual violence against men in interrogation or detention contexts

207. In addition to other forms of torture during interrogation and/or detention, the Mission found credible accounts supporting a pattern of sexual violence perpetrated as torture or ill-treatment against men from Kachin and Shan States. All accounts of sexualised torture reported in the context of detention were perpetrated by the Myanmar Intelligence Office (commonly referred to by its Myanmar acronym SaYaPa), the branch of the Myanmar armed forces tasked with intelligence gathering.[352]

208. For example, the Mission received consistent reports regarding two survivors who were tortured, including through rape and sexual violence, in June 2012 by the SaYaPa in Myitkyina Township, Kachin State. The survivors were physically tortured in other locations while being questioned, including about membership of the KIA, before they were transferred to and detained by the SaYaPa.[353] During the course of questioning by the

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[348] PI-057.

[349] PI-037, K-133a; Also, Shan Human Rights Foundation, *Burma Army kill villager in front of his parents, then force over 1,200 villagers to demonstrate against "insurgents" for killing civilians in Murng Yawng* (1 January 2015); Legal Aid Network and Kachin Women's Association in Thailand, *Justice Delayed, Justice Denied: Seeking Truth about Sexual Violence and War Crime Case in Burma* (2016) pp.3-14; Aye Nay, *Kachin church 'powerless' to investigate teachers' murders* (7 July 2015); US State Department, *Burma 2015 Human Rights Report* (2015), p. 2.

[350] PI-037; A/HRC/28/72, para.59.

[351] Ibid.

[352] PI-052, PI-056, PI-055.

[353] PI-052, PI-056; A/HRC/67/383, paras. 15-16; United Nations Human Rights Council Working Group on Arbitrary Detention, "Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session (22 April-1 May 2014) No. 6/2014" (1 July 2014); S. Mertov, "Burma's New Political Prisoners in Kachin State" (The Irrawaddy, 17 July 2012); see this chapter, section A.3: Torture and other ill-treatment.

SaYaPa, both survivors were forced to undress until they were nude and then penetrate each other anally. The SaYaPa agents were watching the men as they raped each other, humiliating and laughing at them. They asked, "Are you enjoying yourselves?" The survivors were begging for the rapes to stop but they were forced to continue.[354]

209. In a separate incident, a survivor reported attending a SaYaPa office in Myitkyina Township, Kachin State, on 17 June 2012 to answer questions about a bombing in the area. He was then arrested, detained and tortured until he confessed to KIA membership because he thought he would be killed otherwise. This included sexual torture such as rubbing his penis until the skin was torn, peeled and bleeding: "my penis was bleeding, I was really hurting. I don't know how long this lasted; I was numb from the pain at some point."[355]

210. Typically, for reasons of fear of stigma, emasculation and shame, reports of sexual violence by male survivors are exceptional, but may not accurately reflect rates of incidence. In northern Myanmar, the use of sexual torture as a documented technique by authorities in certain cases,[356] combined with the more widespread practice of physical torture perpetrated along with forced nudity, requires further research and investigation to accurately identify the full scope of the use of sexual violence as a form of torture.

Sexual slavery and forced marriages

211. The Mission received two credible accounts relating to sexual slavery and forced marriages in northern Myanmar. These accounts are consistent with prior United Nations reports[357] and suggest both practices may be more widespread than is currently documented. In such circumstances, further investigation is required to determine the scale and nature of both sexual slavery and forced marriage.

212. In one case reported, a teacher in Bhamo Township in Kachin State said that she was abducted in 2012 on her way to school and taken to a military base for forced labour. One night a soldier took her to the tent of a senior Tatmadaw officer. When she fought this officer's attempt to rape her, he burned her arms with cigarette stubs, hit her with the butt of his rifle, knifed her neck and arms, and ultimately punched her so she lost consciousness. She regained consciousness during the rape, and was again knocked unconscious by the perpetrator. The survivor was kept in the senior officer's tent for five to seven days and penetrated repeatedly in the vagina, anus and mouth. She was threatened with gang rape if she resisted. After being raped, she was not allowed to bathe and had to sleep with other detainees on the ground with no blanket. She observed other girls kept in similar conditions by soldiers at the base, and said that three or four girls were repeatedly raped while she was there.[358]

213. The limited information on sexual slavery in northern Myanmar available to the Mission does not lead it to conclude that its incidence is low, especially considering its prevalence in Rakhine State.[359] There are good explanations for the limited information. The close monitoring and restricted movement of sexual slavery victims and the physical injuries caused by the frequency and severity of abuse they experienced lowers the rate of successful escapes and thus of information becoming available. Further, victims confined to officers' private quarters are less likely to be seen by others or identified as sexual slaves. The survivor's observation of other sex slaves at the base in the above account suggests that sexual slavery was not an isolated practice of the Tatmadaw forces at least in that base.

214. There are also credible reports of Tatmadaw soldiers attempting to abduct women to forcibly marry them, including to more senior officers. These instances have been accompanied by intimidation, serious physical violence and the killing of family members

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[354] PI-052, PI-056.

[355] PI-055.

[356] See this chapter, section A.3: Torture and other ill-treatment.

[357] A/HRC/32/18, para. 60; S/2018/250, paras. 57-58.

[358] PI-067.

[359] See chapter V, section D.1.b: A human rights catastrophe – Patterns of serious human rights violations by the Myanmar security forces.

of the targeted woman.[360] For example, in June 2011, Tatmadaw soldiers visited one interviewee's home in Puta-O, Kachin State and asked her father if they could take her away so that a general could marry her. When her father refused, the soldiers beat him so severely that he died.[361] There is information to suggest that certain Christian Kachin women are targeted for forced marriage, but also that such women are covertly forced to convert to Buddhism when they marry higher-ranking Tatmadaw officers, or when their husbands are promoted above a certain rank within the Tatmadaw.[362]

Threats and retaliation for escape

215. Women who either attempted to escape or fight, or whose rape was interrupted by other events, were threatened by their perpetrators,[363] including with death.[364] The Mission found a consistent pattern that when women successfully escaped either during an attempted rape or after rape, the perpetrator soldier/s subsequently went to the survivor's home searching for her,[365] including with his superior officer.[366] In two cases, the survivor's relative at home was told to return the survivor to the military camp as soon as she returned home.[367] Such visits were accompanied by physically abusing the survivor's relatives and confiscating personal property including identification cards.[368] In one case, Tatmadaw soldiers destroyed a survivor's parents' kitchen, beat her parents and took them away for forced labour for a week.[369]

216. This pattern further reinforces the systematic character of abduction of victims from their homes by Tatmadaw soldiers.[370] The involvement of senior officers to forcibly return women to lower-ranking soldiers reinforces the likelihood this is a widespread practice endorsed implicitly or explicitly by senior Tatmadaw commanders.

Persecutory and cruel nature of the sexual violence

217. The investigation found a pattern of persecutory and derogatory behaviour accompanying perpetration of sexual abuse by Tatmadaw soldiers against Kachin women, including insults, spitting, and physical abuse.[371] One survivor recounted she was called a "Kachin bitch" and "children of the fucker".[372] Another survivor said her perpetrators compared Kachin people to dogs.[373] A further witness to the gang rape of two teenage girls by 20 soldiers in a forest heard the soldiers call the girls "witches" and tell them "we will torture you Kachin bitches until you are extinct".[374]

218. The brutality and cruelty of the sexual violence committed by the Tatmadaw is not only present in reports of persecution. Patterns of accompanying extreme physical violence and torture, including by groups rather than individual Tatmadaw soldiers, reflect a widespread culture of tolerance, if not an explicit policy, towards humiliation and the deliberate infliction of suffering on civilians. Both the opportunistic and more calculated commission of sexual violence against women and their relatives in their homes reinforce the Tatmadaw soldiers' confidence in, and enjoyment of, absolute impunity for such violations.

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[360] PI-068, PI-090.

[361] PI-090.

[362] K-134, PI-007.

[363] DI-065, PI-005.

[364] PI-00.

[365] PI-003, PI-005, PI-007, PI-067, PI-068, QI-084.

[366] PI-005.

[367] PI-005, PI-007.

[368] PI-007, PI-023.

[369] PI-063.

[370] PI-005, PI-023, PI-057, PI-110, QI-084.

[371] PI-003, PI-004.

[372] PI-004.

[373] PI-023.

[374] PI-069.

Sexual violence facilitated by insecurity

219. The Mission received credible reports of opportunistic and isolated sexual violence facilitated by the prevailing context of insecurity that were not directly connected to armed conflict.[375] In these cases, sexual violence is a violation of international human rights law when committed by public officials, at their instigation or with their consent or acquiescence, but also when the State does not demonstrate diligence to protect persons from sexual violence by non-State agents and entities, including by investigating such acts and punishing perpetrators in accordance with national law.[376]

5. Arbitrary deprivation of liberty and enforced disappearance

220. The Tatmadaw has engaged in arbitrary arrest and detention, in many cases amounting to enforced disappearance. Men and women, and in some cases children, were taken from their villages and detained for forced labour or because of suspected links to EAOs. Victims have been held incommunicado in unofficial places of detention for periods between a day and two years. Most were not informed of the reason for arrest, nor brought before a judge.

(a) Legal framework

221. International human rights law enshrines the right to liberty and security of the person and to freedom from arbitrary arrest and detention,[377] as well as the State's obligation to ensure that people arrested or detained are informed of the reasons for arrest or detention, and are brought before a court promptly, regardless of whether this right of challenge is exercised or not.[378] Freedom from arbitrary detention is a rule of customary international law; it is even considered peremptory law (*jus cogens*), that is, it cannot be limited or derogated from.[379] An arrest or detention violates international human rights law if it is unlawful, meaning that is not imposed on such grounds and in accordance with such procedure as are established by law,[380] or is otherwise arbitrary in the sense of being inappropriate, unjust, unreasonable or unnecessary in the circumstances.[381]

222. Arbitrary deprivation of liberty is also prohibited under international humanitarian law.[382] Detention of civilians or other protected persons, other than for reasons and in circumstances permitted by international law, is considered unlawful confinement. While international humanitarian law does not explicitly address security detention of civilians in

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[375] PI-007, PI-093, PI-110.

[376] United Nations Declaration on the Elimination of Violence against Women, art. 4 (c), (d) and (o); ICCPR, art. 2; United Nations Human Rights Committee, *"General Comment No. 31 - The Nature of the General Legal Obligation Imposed on States Parties to the Covenant"* (CCPR/C/21/Rev.1/Add. 13), para. 15 and 18; United Nations Committee on the Elimination of Discrimination against Women, *"General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women"* (CEDAW/C/GC/28), para. 17, and "General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19" (CEDAW/C/GC/35), paras. 24-25.

[377] UDHR, art. 9; ICCPR, art. 9(4); CRC, art. 37(b); CAT, art. 11; ICRMW, art. 16(1), (4) and (9); CRPD, art. 14; CPED, art. 17.

[378] ICCPR, art 9(3).

[379] See e.g. United Nations Human Rights Committee, *"General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant"* (CCPR/C/21/Rev.1/Add.6), para. 8; *"General Comment No. 29: Article 4: Derogations during a State of Emergency"* (CCPR/C/21/Rev.1/Add.11), para. 11.

[380] United Nations Human Rights Committee, "General comment No. 35 - Article 9 (Liberty and security of person)" (CCPR/C/GC/35), para. 11.

[381] Ibid. para. 12: "The notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.

[382] See common art. 3 of the Geneva Conventions, requiring that all civilians and persons hors de combat are treated humanely. Arbitrary detention is considered incompatible with this requirement. See also ICRC/Customary IHL, rule 99.

the context of a non-international armed conflict, its requirement of humane treatment of persons implies freedom from arbitrary deprivation of liberty and comparable protection of procedural rights (for example, to be informed of the reasons and given an opportunity to challenge the lawfulness of the detention).

223. Under the national law of Myanmar, both the Constitution and the Criminal Procedure Code prohibit detention of civilians for more than 24 hours without a court's permission;[383] with a constitutional exception if such detention is a matter for "precautionary measures taken for the security of the Union or prevalence of law and order, peace and tranquillity in accord with the law in the interest of the public".[384] The Criminal Procedure Code allows judges to extend the 24-hour custody period to 15 days, or 30 days in the case of offences punishable by more than seven years imprisonment.[385]

224. Under Myanmar domestic law, the powers of arrest principally lie with the Police. However, under the Criminal Procedure Code, Tatmadaw officers may also arrest or confine persons forming part of an assembly that manifestly endangers public security when no magistrate can be communicated with, but they must communicate with a magistrate when it becomes practicable to do so.[386] Furthermore, the State Protection Act, in force from 1975 until its repeal in May 2016, allowed Tatmadaw officers to arrest and detain any person when ordered to do so by the "Central Board".[387] Anyone taken into custody by the Tatmadaw must be swiftly handed over to police authorities.

225. The prohibition of enforced disappearances is a norm of peremptory law (*jus cogens*). Enforced disappearances violate the right to liberty and security of the person and violate or constitute a grave threat to the right to life, along with several other rights. International humanitarian law also prohibits enforced disappearances.[388] An enforced disappearance is constituted by three elements: (1) a person is detained or otherwise deprived of liberty; (2) the deprivation of liberty is carried out by State agents or by persons or groups of persons acting with the authorisation, support or acquiescence of the State; and (3) a refusal to acknowledge the deprivation of liberty, or concealing the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.[389]

(b) Findings

Arbitrary deprivation of liberty

226. The Mission received widespread and consistent accounts of individuals being arbitrarily arrested and then detained by the Tatmadaw throughout the reporting period, and from across Kachin and Shan States. Many individuals were detained for the purpose of forced labour. The Mission also received reliable and consistent accounts of individuals being arrested and detained after the Tatmadaw were attacked by EAOs, or during military operations, because they were suspected of being a member or supporter of the organization.[390] Individuals were seemingly arrested simply because they were in the vicinity of a recent attack, or because they were from a village near to the incident, and of the same ethnicity as the group in question. This appeared to reflect a mentality that all individuals of a given ethnicity supported the associated EAO.[391] For example, one victim from Mogaung Township, Kachin State, who was detained for three days in August 2017, reported that soldiers from the Tatmadaw repeatedly questioned him about who from his

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[383] Constitution of Myanmar, s. 21(b); Criminal Procedure Code of Myanmar, s. 61.

[384] Constitution of Myanmar, s. 376.

[385] Criminal Procedure Code of Myanmar, s. 60-61, 81, 167.

[386] Criminal Procedure Code of Myanmar, s. 131.

[387] State Protection Act (1975), s. 15; Criminal Procedure Code of Myanmar, s. 21. As per s. 8 of the State Protection Act, a Central Board is formed by the Cabinet and chaired by the Minister for Home and Religious Affairs, and includes the Minister for Defence and the Minister for Foreign Affairs.

[388] ICRC/Customary IHL, rules 98 and 150.

[389] CPED, art. 2.

[390] DI-060, DI-066, DI-067, PI-035, PI-044, PI-047, PI-058, PI-086, SI-004.

[391] DI-066, PI-054, PI-059, PI-074, PI-075, PI-086.

village was a member of the KIA, refusing to believe him when he responded that the villagers were simply "ordinary people", with one of the members of the Tatmadaw insisting that "all Kachin men are members of the KIA."[392]

227. The victims of arbitrary arrest and detention included men[393] and women.[394] In some cases men[395] and village leaders were selectively targeted.[396] Children were also detained, because they were themselves suspected, were subjected to forced labour, or were detained with their mothers.[397]

228. The Mission received accounts of mass-arrests and detention.[398] For example, during intense fighting between the Northern Alliance and the Tatmadaw in Monekoe, Muse Township, Shan State, more than 100 people were arrested on 20 November 2016 and detained by the Tatmadaw in a military base.[399]

229. The Mission also received credible information indicating that the Tatmadaw has detained individuals, primarily or partially, in order to extract bribes.[400] For example, one male victim reported that he was arrested at a checkpoint while travelling from Hpakant to Myitkyina, Kachin State in 2016 and asked for jade or money. He was kept overnight in a tent serving as a makeshift lock-up before being released.[401]

Duration and perpetrators

230. In most of the accounts received, individuals were detained for several days.[402] However, in some cases, individuals were detained for longer periods, of one month or more.[403] One victim from a village in Kyethi Township, Shan State, reporting being detained for two years in a forced labour camp from 2015 to 2017.[404]

231. In nearly all accounts, Tatmadaw soldiers were identified as the perpetrators of arbitrary arrests and detention.[405] The Mission also received credible accounts of militias participating in arrests and detention alongside members of the Tatmadaw.[406] Accounts were also received of the SaYaPa intelligence officers being responsible.[407]

Lack of compliance with procedural safeguards

232. The Mission amassed a consistent body of information drawing a pattern of civilians being detained in locations not officially recognised as places of detention, both in the context of forced labour and because they were suspected of links with ethnic armed organizations. Detained individuals were often kept in military bases or camps,[408] sometimes in makeshift lock ups,[409] and in SaYaPa offices.[410] Other places of detention

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[392] PI-044.

[393] DI-067, PI-059, PI-062, PI-075.

[394] PI-058, PI-066, PI-086.

[395] DI-063, PI-074, PI-084.

[396] DI-067, PI-035, PI-111.

[397] DI-071, PI-047, PI-063, QI-094, SI-003, V-055.

[398] DI-066. See this chapter, section A.8: Emblematic incidents (Tanai).

[399] DI-058, DI-060, V-056. See this chapter, section A.8: Emblematic incidents (Monekoe).

[400] DI-064, DI-072, PI-011, PI-022.

[401] DI-064.

[402] One day or less: PI-029, PI-054, PI-058, PI-081. Two days: PI-033, PI-047, SI-004.
Three days: PI-044 PI-092, PI-083, PI-061. Four days: PI-021, PI-084, PI-095.
Six days: PI-006, PI-077.1 week: DI-067, PI-080.

[403] 15 days: DI-060.1 month: PI-011, PI-019, PI-079, PI-111. 2.5 months: PI-085. 6-7 months: PI-068.

[404] PI-013.

[405] PI-006, PI-011, PI-020, PI-021, PI-026, PI-062, PI-068, PI-074, PI-089, PI-096.

[406] PI-054, PI-056, SI -004.

[407] PI-052, PI-055, PI-056.

[408] DI-067, DI-058, DI-060, PI-006, PI-020, PI-061, PI-062, PI-066, PI-067, PI-068, PI-078, PI-079, PI-084.

[409] DI-064, PI-011.

[410] PI-052, PI-055, PI-056.

included houses[411] and monasteries[412] or in multiple locations in forest areas for example during forced labour portering.[413] In some cases, victims were initially held in the location where they were arrested and then moved to military camps or SaYaPa offices.[414]

233. The Tatmadaw also systematically detained individuals in these unofficial places of detention without compliance with procedural safeguards. Victims consistently told the Mission they were not informed of the reasons for their arrest.[415] For example, a female victim reported how she was arrested, together with her two children, without being given reasons, in Mogaung Township, Kachin State, in August 2017:

> *There was fighting between the Tatmadaw and the KIA. We ran away and when we came back to the village there were soldiers everywhere. I was arrested with my two children. I was taken to a primary school and put in a classroom with a guard. They did not give us any reasons, they just locked us in all day. In the evening they took us to the forest, and two days later they let us go.*[416]

234. Most victims were held incommunicado without being able to inform their families of their location, had no access to a lawyer and were not brought before a court.[417]

235. In some cases, individuals arrested and detained for suspected links to armed groups were eventually brought to court and charged, usually under the Unlawful Associations Act.[418] However, in these instances this was after a period of being detained incommunicado in unofficial places of detention.[419] For example one individual from Waingmaw Township, Kachin State, reported how her relative was arrested and held on a farm before being transferred to a Police Station:

> *In 2016, my relative was on the way to farm crops when he was arrested by the Tatmadaw. A friend told me they saw him tied-up with guns pointed at him. The soldiers were saying that he was a member of the KIA and my brother was denying this. The soldiers asked for 3,000 Kyat in exchange for his release. We tried to gather the money but they said it was taking too long so they took him to a farm nearby. Then he was moved to a district police station and held there for one month. Now he is in prison.*[420]

236. The Mission received information that, in some instances, individuals, including children, who were transferred to recognised places of detention were still not afforded full procedural safeguards, including:

- not being provided with information about the charges against them in a language which they understand;[421]
- being held incommunicado; and[422]
- being denied access to legal counsel until after their hearing.[423]

237. The Mission received accounts of Tatmadaw soldiers or SaYaPa officers forcing victims to sign pre-written statements during detention. Victims reported different issues in relation to these statements, including not being aware of the contents of the written statement or document;[424] the statements wrongly asserting the individual had not been

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[411] PI-053, PI-075, SI-004.
[412] PI-056, PI-074, PI-076, PI-111.
[413] PI-047, PI-080, PI-085, PI-095, PI-096.
[414] PI-035, PI-052, PI-056.
[415] PI-011, PI-019, PI-047, PI-054, QI-080.
[416] PI-047.
[417] DI-067, PI-006, PI-035, PI-044, PI-077, PI-080.
[418] See this chapter, section A.C: Lack of recourse.
[419] PI-022, PI-052, PI-055, PI-056, PI-109.
[420] PI-022.
[421] V-055.
[422] PI-052 V-118.
[423] V-055, V-112.
[424] PI-046, PI-056.

subject to ill-treatment;[425] or the statements being admissions of guilt.[426] For example, one victim from a village in Kyaukme Township, Shan State, who was arrested in August 2017 and held for more than 24 hours, was made to sign a document with his thumb which stated that he was "the enemy", was involved in political activities and would "not be involved with political activities in the future".[427]

Detention in inhuman conditions

238. Victims consistently gave accounts of inhuman conditions in unofficial places of detention which could amount to ill-treatment[428] including being held for periods:

- in inadequate accommodation, including in the open air without bedding;[429]
- without access to adequate sanitary facilities;[430]
- without adequate food being provided, including being denied food,[431] receiving insufficient food or food of poor quality;[432]
- without access to safe drinking water when needed, including being denied access to water entirely or being allowed only a limited amount or only water that is unsafe;[433] and
- without access to health care,[434] in one account leading to death.[435]

239. For example, a male victim from a village in Puta-O Township, Kachin State, who was detained for six days in 2017 reported poor conditions and his friend dying in detention:

> *I was arrested by the Tatmadaw during a church festival with nine other people. We had to carry rice between a military base and our village. We were given only a small portion of hard rice to eat each day and felt hungry all the time. We could only drink one cup of water per day and were not allowed to drink from the stream nearby. One day one of my friends was very sick with stomach problems and could not walk. One of the soldiers kicked him in the stomach making it worse. We carried him but before reaching the village my friend died. The soldiers said we were responsible for his death and would be placed in jail and tortured because we had killed him. We managed to escape but afterwards Tatmadaw soldiers came to my house to look for me and said they had opened a case against me for the death of my friend.*[436]

240. The Mission was able to collect only limited information on conditions in official places of detention, but credible reports indicate that individuals detained there were also held in inhuman conditions, including in inadequate accommodation in overcrowded cells with an insufficient number of beds.[437] The Myanmar National Human Rights Commission has acknowledged that detainees are kept in overcrowded conditions in several detention facilities including in Lashio and Myitkyina prisons.[438]

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[425] PI-044.

[426] PI-035, PI-052.

[427] PI-035.

[428] See this chapter, section A.3. Torture and other ill-treatment.

[429] DI-058, DI-060, PI-079, PI-095.

[430] DI-058, DI-060, PI-109.

[431] DI-060, PI-038, PI- 096.

[432] DI-058, DI-060, PI-019, PI-020, PI-044, PI-080, PI-083, PI-085, PI-092, PI-095.

[433] DI-060, PI-019, PI-020, PI-077, PI-083, PI-084, PI-085, PI-095.

[434] PI-035, PI-077, PI-080.

[435] PI-077.

[436] PI-077.

[437] PI-038, PI-109.

[438] Republic of the Union of Myanmar - Myanmar National Human Rights Commission, e.g. *"Statement regarding visit to Mandalay, Naung Cho, Thi Paw and Lashio Township Prisons and Work Stations Statement No. (8/2015)"* and *"Statement by the Myanmar National Human Rights Commission on its*

Torture, ill-treatment, sexual violence, and killings in unofficial places of detention

241. Detained individuals were frequently subjected to torture and ill-treatment while in unofficial places of detention, in particular where the individual was being questioned on suspected links to EAOs,[439] or for either walking or working too slowly during forced labour.[440] Victims were also subjected to racist, ethnic or dehumanizing insults.[441] One victim from a village in Sumprabum Township, Kachin State, described how 16 villagers were arrested, detained and questioned during a period of fighting between the KIA and the Tatmadaw in 2015:

> *In December 2015, there was fighting between the KIA and the Tatmadaw. Soldiers entered my village and six villagers were arrested including two village administrators. Soldiers also arrested 10 people from another village called Hka Garan including two village administrators and took us all to a military base. The soldiers interrogated us; they threatened to kill us if we didn't answer properly and accused us of being KIA soldiers. We told them that we are not soldiers and have nothing to do with the KIA, we are just villagers but they said we had to be KIA soldiers and hit us with the backs of their guns and insulted us. Every day for a week, we received the same questions and every day we gave the same answers.*[442]

242. The Mission also verified that victims were killed in detention,[443] and subjected to sexual violence while in detention.[444]

End of unofficial detention

243. In some cases individuals detained for forced labour or because of suspected links to armed groups were released by the Tatmadaw[445] including following an intervention by village administrators or upon payment of a sum of money.[446] However, victims also seized opportunities to escape.[447] For example, one female victim from Waingmaw Township, Kachin State, reported how, after being detained for several months on a military base in 2012, she managed to escape one night, when the soldiers were drunk, and run away through the forest.[448]

244. The Mission received consistent reports of Tatmadaw soldiers shooting at individuals fleeing detention.[449] Two victims further reported being left behind to die in the forest by Tatmadaw soldiers because they were unable to walk.[450]

245. In some cases, those initially held in unofficial places of detention were subsequently transferred to official places of detention.[451]

Enforced disappearance

246. The Mission received credible accounts of disappearances, many amounting to enforced disappearances carried out by the Tatmadaw and SaYaPa.[452] In some cases, individuals who were arrested and disappeared were later confirmed to have been in the

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visit to the Kachin State (13 December 2011)", available at http://www.mnhrc.org.mm/en/statements-2/.

[439] DI-066, DI-067, PI-004, PI-054, PI-059, PI-074, PI-086. See this chapter, section A.3: Torture and other ill-treatment.

[440] See this chapter, section A.6: Forced labour.

[441] DI-066, PI-004, PI-059.

[442] DI-067.

[443] See this chapter, section A.2: Unlawful killings.

[444] PI-006, PI-067, PI-068. See this chapter, section A.4: Sexual and gender-based violence.

[445] PI-044, PI-053, PI-058, PI-081, SI-004.

[446] PI-035, PI-075, PI-081.

[447] PI-006, PI-029, PI-033, PI-066, PI-077, PI-079, PI-084, PI-085.

[448] PI-068.

[449] DI-067, PI-026, PI-029, PI-084. See this chapter, section A.2: Unlawful killings.

[450] PI-021, PI-080.

[451] Ibid.

[452] DI-059, K-138, K-139, PI-037, PI-038, PI-052, PI-069, PI-106, V-056, V-057, V-121, V-122.

custody of the Tatmadaw or SaYaPa.[453] Active efforts were made to conceal the fate, or whereabouts, of these individuals.

247. For example, Dumdaw Nawng Lat, President of the Kachin Baptist Church in Monekoe, Muse Township, Shan State, and his nephew and assistant pastor Langjaw Gam Seng, were called to a military base on 24 December 2016 and then disappeared.[454] In early December 2016, the pastors had shown journalists around their damaged church, which they alleged had been hit by a Tatmadaw airstrike. News articles featuring pictures of the church had been released in the weeks prior to their disappearance, with one article explicitly alleging Tatmadaw responsibility, published on 23 December 2016.[455] A missing person's report was filed with police on 4 January 2017. On 10 January 2017, Presidential Spokesperson Zaw Htay reportedly denied that they were detained by the military and suggested they may have been taken by the KIA.[456] On 19 January 2017, the Commander-in-Chief, Senior-General Min Aung Laing, confirmed in a Facebook post that the men were detained by the military.[457] It was later confirmed that they had been detained in a military camp, before being transferred to Muse police station on 24 January 2017, a month after they had first been detained. During their detention they were coerced to sign confessions.[458]

248. The Mission received credible examples of individuals who were searching for disappeared victims being given conflicting information on their fate by the authorities.[459] For instance, an individual searching for Laphai Gam, a villager from Muse Township who disappeared in December 2016, was reportedly told by the police that he had been arrested by the Tatmadaw and would be released in a few days. When he did not appear a few days later, the individual went to a Tatmadaw base and was told by a soldier that the victim had been seen talking to the KIA and that the KIA may be responsible. Later, they heard through an intermediary that a Tatmadaw commander had indicated that the victim had been detained and then released. The whereabouts of the victim remains unknown to date.[460]

249. Another case involves Sumlut Roi Ja, who was reportedly arrested by the Tatmadaw on 28 October 2011 from a field and detained in a military camp near Hkai Ban village, Moemauk Township, Kachin State. She was reportedly arrested alongside two other individuals who managed to escape. She was later seen in the military camp, and an Army Commander stated she was detained and would be released the next day, but she did not appear. Letters were sent to the Kachin State Chief Minister, copied to several other authorities,[461] and a habeas corpus petition brought before the Supreme Court in 2012. The Supreme Court rejected the petition based on a case file from an investigation carried out by the Northern Regional Command's Base Strategic Operation Command located in Moe Meik.[462] The Myanmar Government responded to a communication from the Special Rapporteur on Myanmar and other special procedures mandate holders in 2013, stating that personnel from the military post "did not carry out any activities whatsoever outside their camp".[463] However, in a documentary film released in 2015, a soldier from the military camp in question, who was detained by the KIA, stated that the soldiers had left their camp looking for food and had encountered Sumlut Roi Ja, and that their commanding officer had

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[453] PI-037, PI-038, PI-052.

[454] PI-037, PI-038, V-057.

[455] L. Weng, "Bishop Says Mong Ko Church Damaged by Government Air Strikes" (The Irrawaddy, 23 December 2016).

[456] J. Zaw, "Concern mounts for two missing Baptists in Shan State" (UCA news, 10 January 2017).

[457] Post on file with the Mission.

[458] PI-037, PI-038, V-058. See also this chapter, section C.3: Lack of recourse.

[459] DI-059, K-138, K-139, V-056.

[460] K-149, V-056.

[461] K-138.3.

[462] K-138.2.

[463] Letter from the Permenant Mission of the Republic of the Union of Myanmar to the United Nations Office andother International Organizations in Geneva, 16 March 2013, available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=82270

falsely told the Northern Command that they had not left their camp.[464] No new investigations have been conducted and her fate remains unknown.[465]

250. The lack of compliance with procedural safeguards for detention which should protect against disappearances (see above) meant family members were frequently unaware of the whereabouts of their detained relatives until they escaped, were released or were transferred to official places of detention, which in some cases was weeks or months later.[466] In other cases, individuals arrested by the Tatmadaw never returned and their families do not know their fate.[467] For example, one woman from a village in Tanai Township, Kachin State, reported that her husband disappeared after he went gold mining in January 2014. She was told by witnesses that he was detained by the Tatmadaw in April 2014 and taken to do forced labour, but he has not been heard from since.[468] A victim arrested by the Tatmadaw in Monekoe, Muse Township, Shan State in November 2016, and later released, told the Mission, "I was worried that if I die here, my family would not even find my body".[469] Other individuals reported being arrested alongside family members, but leaving them behind when they managed to escape detention and never hearing from them again.[470]

251. The Mission also received accounts of cases where individuals were detained by the Tatmadaw and, after family members searched for them, were found dead, often buried, and sometimes with ropes binding their wrists.[471] In two cases reported to the Mission, Tatmadaw solders were reportedly later found to be responsible for the killings.[472] The Mission has also received credible reports of the Tatmadaw committing killings of multiple individuals at the same time and the discovery of graves containing the remains of a number of individuals.[473] These and other accounts received by the Mission point to a pattern of intentional concealing of the remains of individuals who are killed during detention.[474]

252. In some cases family members or persons associated with disappeared individuals submitted complaints to the authorities about the disappearance.[475] However, others did not. One individual told the Mission of being too afraid to complain, and it is likely that many in this situation shared the same fears.[476] These fears are not unfounded given the numerous cases verified by the Mission where the Tatmadaw threatened or brought legal charges against individuals reporting or alleging its involvement in violations.[477] Some said they did not see any point in filing a complaint with the police or Tatmadaw, and instead they themselves searched for the missing person.[478] One individual from Loilen Township, Shan State, told the Mission he did not file a complaint concerning his missing father as "the government does not care about us and the Tatmadaw are abusive - there is no justice for the Shan".[479] His father was arrested by the Tatmadaw in 2011 and was then missing for a week before his body was found in the forest with his hands tied. The Mission also received credible information that in one case, where two individuals were missing in Mansi Township, Kachin State in 2018, the Tatmadaw denied villagers permission to search for them.[480] In another case, an individual told the Mission how she had to persuade her village

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[464] K. McLeod/DVB Multimedia Group, "The Disappearance of Roi Ja" (2015).

[465] V-332.

[466] See this chapter, section A.2: Unlawful killings.

[467] PI-004, PI-069, PI-099.

[468] PI-069.

[469] K-148.

[470] PI-004, PI-099.

[471] K-139, K-140, PI-082, PI-106, V-021, V-022. See this chapter, section A.2: Unlawful killings.

[472] K-140, V-021, V-022.

[473] See this chapter, section A.2: Unlawful killings.

[474] DI-063, PI-062. See this chapter, section A.2: Unlawful killings.

[475] DI-059, K-139, PI-037, PI-038, PI-052.

[476] DI-057.

[477] See this chapter, section C.3: Lack of recourse.

[478] PI-069, PI-082.

[479] PI-082.

[480] K-139.

administrator to look for her a relative who had been arrested by the Tatmadaw in Bhamo Township, Kachin State in January 2018:

> *My relative went to check the cattle and didn't come back. Some people told us that they had seen him tied up and with Tatmadaw soldiers. We asked the village administrator permission to go and look for him, but he said it was too dangerous. We insisted and eventually we were allowed to go. We found his body one month later, facing down in a ditch. We could see bullet wounds in his back – it looked like he had also been beaten.*[481]

6. Forced labour and forced recruitment of adults and children

253. Forced labour is a common feature of life for many in northern Myanmar.[482] The Mission verified a pattern of continuing systematic use by the Tatmadaw of forced labour, including for portering, digging trenches, guiding or cooking. Soldiers routinely arrived in villages without warning and took people for forced labour, often for weeks at a time. Some of those taken were required to fight for the Tatmadaw. The Tatmadaw recruited children throughout the reporting period, although it has undertaken some efforts to address this issue.

(a) Legal framework

254. The International Labour Organization Forced Labour Convention 1930 (No. 29), which Myanmar acceded to in 1955, defines forced or compulsory labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". Under this Convention, Myanmar is obliged to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. Myanmar has also acceded to the International Labour Organization Worst Forms of Child Labour Convention 1999 (No. 182), under which it is obliged to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. Forced or compulsory labour is also prohibited under international human rights law. Provisions to that effect feature in several human rights treaties ratified by Myanmar: the ICESC (art. 6.1), the CRC (art. 32) and the CRPD (art. 27.2).

255. The definition of forced or compulsory labour comprises three basic elements: work or service, which is exacted under the menace of a penalty, and undertaken involuntarily. "Work or service" refers to all types of work, service or employment, occurring in any activity, industry or sector (both public and private). "Menace of any penalty" refers to a wide range of penalties used to compel someone to perform the work or service, including penal sanctions and various forms of direct or indirect coercion, such as physical violence, psychological threats or the non-payment of wages. Involuntariness refers to the free and

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[481] PI-106.

[482] In 1998, a Commission of Inquiry of the International Labour Organization (ILO) published a report concluding that Myanmar violated its obligation to suppress the use of forced or compulsory labour "in a widespread and systematic manner, with a total disregard for the human dignity, safety and health and basic needs of the people". The Commission found that there was abundant evidence showing "pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military". It concluded that "it is a story of gross denial of human rights to which the people of Myanmar have been subjected particularly since 1988 and from which they find no escape except fleeing from the country". See, "Forced Labour in Myanmar (Burma). Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)" (ILO, Geneva, 1998). Some moderately positive improvements in the use of forced labour were reported from 2002 onwards, after greater engagement with the ILO began, suggesting the central authorities no longer requisitioned labour for major national infrastructure projects (e.g. A/HRC/4/14, para. 44; A/HRC/7/18, para. 33). However, systematic forced labour by the military reportedly continued unabated. See e.g. ILO Report on ILO Activities in Myanmar, 20 February 2014, GB.320/INS/6(Rev.); A/HRC/16/59, para. 93.

informed consent of a worker to enter into an employment relationship and the freedom to leave the employment at any time.[483]

256. International law permits some exemptions to the general prohibition of forced labour. In addition to compulsory military service, prison labour and work in the context of emergencies, the exemptions include normal civic obligations and minor communal service. Examples of civic obligations include compulsory jury service and the duty to assist a person in danger. "Minor communal service" means service performed by the members of the community in the direct interest of the community. It must be "minor", that is, related primarily to maintenance work and, in exceptional cases, to the erection of certain buildings intended to improve the social conditions of the population of the community itself; The service must also be "communal", that is, in the direct interest of the community (and not related to the execution of works intended to benefit a wider group). Importantly, the members of the community which has to perform the services, or their direct representatives, must have the right to be consulted in regard to the need for such services.[484]

257. Section 359 of the 2008 Constitution of Myanmar prohibits forced labour but allows for exceptions ("hard labour as a punishment for crime duly convicted and duties assigned thereupon by the Union in accordance with the law in the interest of the public"). Although the formulation is somewhat unclear, these exceptions appear to exceed the permissible exceptions under international labour law and international human rights law.[485] The Towns Act (1907) and the Village Act (1908), which gave broad powers to local authorities to requisition labour from villagers, were repealed in 2012 and replaced with the Ward and Village Tract Administration Law. This Law explicitly sanctions the use of forced labour (art. 27)[486] as does the Myanmar Penal Code (art. 374).[487]

(b) Findings

258. The Mission found a pattern of systematic use of men, women and children for forced labour across Kachin and Shan States, throughout the reporting period, including in areas of the States not subject to active conflict. In many instances the Tatmadaw arrived in a village and arrested many people who were then detained for forced labour, without warning or consultation.[488] Sometimes, villagers were taken directly from their homes.[489] In some cases this was done in an organized fashion, such as house by house,[490] on the basis of a quota for each family,[491] through a list,[492] or with the cooperation of village leaders.[493] For example, one individual from Namhsan Township, Shan State, recounted how 40 soldiers entered his village in March 2013 and called a meeting of the village and then took people away for forced labour.[494] Individuals were also taken for forced labour from the areas

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[483] See International Labour Organization, *"ILO Standards on Forced Labour - The new Protocol and Recommendation at a Glance / International Labour Office, Fundamental Principles and Rights at Work Branch"* (ILO, Geneva, 2016).

[484] See, "Forced Labour in Myanmar (Burma). Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)" (ILO, Geneva, 1998), paras. 205-213.

[485] See e.g. Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 99th Session, 2010, p. 253, para. 11.

[486] "Whoever commit any threat or use force for his own interest that infringe anyone's interest such as forced labor shall be fined either less than one year imprisonment or 100,000 Kyat or both."

[487] "Whoever unlawfully compels any person to labour against the will of that person shall punished with imprisonment, of either description for a term which may extend to one year, or with fine, or with both."

[488] DI-057, PI-019, PI-081, PI-083, PI-084, PI-095, SI-003.

[489] PI-081, PI-084, PI-094.

[490] PI-081, QI-093.

[491] PI-006, PI-007, QI-086.

[492] PI-006, PI-007, PI-033.

[493] PI-011, PI-033, PI-095, PI-109, PI-111.

[494] PI-095.

surrounding their villages while they were fishing or farming or running errands[495] or while travelling.[496] For example, one individual from Puta-O Township, Kachin State, described being stopped by the Tatmadaw while travelling on a highway in February 2018, then being taken to a military base and being required to dig trenches for eight days.[497] In another incident from 2015, individuals were taken for forced labour from a camp for internally displaced persons in Bhamo Township, Kachin State.[498]

259. Individuals stated that it was not possible to refuse to participate in forced labour,[499] and no compensation of payment was received for the labour.[500] In some cases, arrest for forced labour was accompanied by destruction of houses and looting of property,[501] or by threats, including death threats, or ill-treatment against the individual,[502] or their family members.[503] For example, a teacher from Bhamo Township, Kachin State, described how she was threatened and ill-treated while being taken for forced labour in 2012:

> *I was on my way to work when four soldiers stopped me. The soldiers asked me where I was going and I explained I was going to the school where I teach. The soldiers said "you don't need to teach any more, come with us." I told them that I had to go to school because the students had exams and needed their teacher. The soldiers got angry. They pointed their guns at me and said "do not speak to us this way, you need to follow us, if you don't come with us you will die." They slapped me, blindfolded me and made me walk with them carrying heavy bags.*[504]

260. While in some cases only men were taken for forced labour,[505] frequently women were also victims.[506] Children were also subjected to forced labour.[507] Most child victims were aged 12 or over,[508] but one victim from Kutkai Township, Shan State, reported being taken for portering on multiple occasions from nine years of age until she left Myanmar aged 27, following an attempted rape during forced labour in 2012.[509] Victims of forced labour also included individuals suffering from health issues[510] and elderly individuals.[511] For example, one child from Tanai Township, Kachin State, described how all the people in her village were subjected to forced labour:

> *There is a military base nearby my village. Villagers are often forced to work for the soldiers at the base, cooking, cleaning, building and doing other tasks. Even the children have to participate – they carry small bricks for building and the elderly have to plant trees and do other work.*[512]

261. The location and duration of forced labour varied. Many individuals were subjected to forced labour at military bases,[513] which in some cases were close to their villages.[514] Others were required to travel long distances through the forest with the Tatmadaw.[515]

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[495] PI-060, PI-079, PI-096, QI-095.

[496] PI-029, PI-067, PI-078, PI-089, PI-096, PI-111.

[497] PI-078.

[498] PI-026.

[499] DI-064, PI-017, PI-078, QI-077, QI-086.

[500] PI-005, PI-013, PI-021.

[501] PI-023, PI-067, PI-080.

[502] PI-022, PI-023, PI-063, PI-067, PI-099.

[503] PI-022, PI-068.

[504] PI-067.

[505] DI-063, PI-077, PI-080.

[506] PI-006, PI-063, PI-067, PI-068, PI-089, PI-099.

[507] DI-063, DI-071, DI-072, DI-073, PI-022, PI-063, QI-084.

[508] DI-063, DI-072, DI-073.

[509] QI-084.

[510] PI-033, DI-071.

[511] PI-063, DI-071.

[512] PI-063.

[513] PI-006, PI-019, PI-020, PI-061, PI-063, PI-068, PI-077, PI-079, PI-084.

[514] PI-061, PI-063, PI-077.

[515] PI-033, PI-083, PI-085, PI-099.

Individuals were also required to cook for the Tatmadaw in their own homes[516] or, in two cases, act as translators for the Tatmadaw.[517]

262. In some cases individuals would carry out forced labour during the day and then return to their homes during the nights.[518] However, in many cases individuals subjected to forced labour were not able to return to their homes until they were released or escaped.[519] This varied from a period of a day,[520] to a month or more,[521] or in one case two years.[522] Measures were taken to try to prevent individuals escaping, including tying up their feet with chains,[523] tying up their hands,[524] and threatening retribution if they escaped.[525] Victims also reported that soldiers would shoot at those attempting to escape captivity.[526] For example, one woman from Waingmaw Township, Kachin State, who was forced to act as a porter for one day in December 2016, told the Mission, "I decided to escape after my friend was raped. When we started to run, soldiers were shooting at us. I fell down a cliff and lost consciousness. When I woke up I was covered in blood."[527]

263. Forced labour has been a common feature of village life for many in Kachin and Shan States.[528] One individual reported that in her village in Kutkai Township, Shan State, forced labour happened almost weekly.[529] Forced labour was so prevalent that another individual from Puta-O Township, Kachin State, told the Mission she did not know it was a human rights violation until she left the country. In the words of a victim from Myitkyina Township, Kachin State, who was taken for forced labour twice a month or more from the age of 12 or 13, "We have done this for our whole lives".[530]

264. Individuals subjected to forced labour were required to perform a variety of tasks. Many of those detained were required to act as porters for the Tatmadaw,[531] carrying heavy packages including food[532], clothes[533] and in some cases weapons[534]. Porters would often have to walk long distances over difficult terrain and for multiple consecutive days. For example, one individual from Shan State who was forced to work as a porter in December 2014 described being required to walk carrying heavy packs and weapons over a long distance from the south of Namhsan Township into neighbouring Manton Township, over four days without any food.[535] Other common types of work, carried out by men and women, included:

- Acting as guides to show soldiers the route between villages[536]
- Digging trenches[537]
- Cleaning[538]

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[516] PI-060, PI-075, PI-093, PI-094.

[517] PI-111, QI-077.

[518] PI-005, PI-007.

[519] See this chapter, section A.5: Arbitrary deprivation of liberty and enforced disappearance.

[520] PI-007, PI-029, PI-081.

[521] PI-011, PI-019, PI-068, PI-079, PI-085.

[522] PI-013.

[523] PI-019, QI-098.

[524] PI-012, PI-060, PI-084, QI-093.

[525] PI-025, PI-026, PI-078.

[526] PI-026, PI-029, PI-084, QI-085.

[527] PI-029.

[528] DI-064, DI-072 (2010), PI-007, PI-022, PI-077, PI-089, PI-109, QI-090.

[529] QI-084.

[530] DI-063.

[531] DI-057, PI-022, PI-023, PI-033, PI-060, PI-067, PI-067, PI-076, PI-077, PI-080, PI-083, PI-089, PI-092, PI-094, PI-095.

[532] PI-006, PI-011, PI-020, PI-021, PI-022, PI-029, PI-077.

[533] PI-022, PI-076, PI-079.

[534] DI-063, DI-064, PI-022, PI-076, PI-080, PI-096, PI-099.

[535] PI-096.

[536] PI-060, PI-095, QI-095.

[537] PI-061, PI-084.

- Cooking[539]
- Collecting firewood[540]
- Cutting down trees[541]
- Constructing roads or buildings in military compounds[542]

265. Individuals frequently had to perform a combination of different tasks. For example, one person from Puta-O Township, Kachin State told the Mission about the tasks she was required to complete when taken for forced labour on many different occasions:

> *In my village every family had to participate in forced labour. The soldiers came to the village and they assigned responsibilities to each family. There was no way out. They would register the names of the villagers who had to work. The military was building a road, so we had to carry stones and heavy materials for them. We also had to wash clothes, clean and cook their food. My parents were used as porters.*[543]

266. The Mission received repeated accounts that individuals subjected to forced labour were made to walk at the front of the line when the Tatmadaw was travelling through the forest in areas of active conflict.[544] Some told the Mission that they were put at the front to act as "human mine sweepers", being the first to encounter any landmines in the area, rather than the soldiers. Several victims of forced labour witnessed other civilians being injured or killed by landmines during forced labour.[545] Others subjected to forced labour were killed or injured during clashes between the Tatmadaw and EAOs.[546] The Mission received information on two cases where individuals were forced to wear Tatmadaw uniforms while walking at the front of the line, further exposing them to attacks, death and injury.[547] Victims were also intentionally killed during forced labour.[548]

267. Individuals subjected to forced labour were frequently also subjected to ill-treatment. Most of these victims who spoke to the Mission reported that they had been beaten during forced labour,[549] often for walking too slowly[550] or resting[551]. Individuals were also subjected to torture.[552] Women detained for forced labour were vulnerable to sexual violence, and several victims told the Mission that they were subjected to rape and other forms of sexual violence by the military in this context. One woman who was detained for forced labour in Bhamo Township in Kachin State in 2012 was kept as a sexual slave for up to seven days.[553]

268. There was also a complete disregard for the humanity of the victims. Soldiers used derogatory language, on ethnic or religious grounds, or dehumanising language against victims.[554] Others were subjected to death threats.[555] For example, a female victim from Puta-O Township, Kachin State, who was subjected to forced labour for several days in June 2015, reported being subjected to death threats:

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[538] PI-067, PI-078, PI-084.

[539] PI-079 PI-080 PI-067 PI-068, PI-006, PI-020, PI-084, PI-080, PI-067, PI-063, PI-104.

[540] DI-065, PI-006, PI-020.

[541] PI-019, PI-077.

[542] PI-006, PI-007, PI-020, PI-061, PI-089.

[543] PI-007.

[544] PI-020, PI-022, PI-076, PI-085, PI-104, QI-095.

[545] PI-085, PI-104.

[546] PI-022, PI-080.

[547] PI-020, PI-085.

[548] See this chapter, section A.2: Unlawful killings.

[549] DI-066, PI-013, PI-021, PI-029, PI-033, PI-044, PI-053, PI-061, PI-078, Pi-078, PI-083, PI-084, PI-086, PI-089, PI-094, PI-099.

[550] PI-083, PI-084, PI-089, PI-099.

[551] PI-078, PI-089.

[552] See this chapter, section A.3: Torture and other ill-treatment.

[553] PI-067. See this chapter, section A.4: Sexual and gender-based violence.

[554] DI-063, DI-064, PI-007.

[555] DI-065, PI-062.

> *The soldiers came to our house and asked for one person for forced labour. As I was the eldest sibling I had to go. We had to carry some bags which were very heavy. I don't know what was in them, the soldiers said "you shouldn't ask anything. If you ask we will kill you." We weren't allowed to rest all day. When it was dark we stopped in the forest. We had to look for firewood and prepare dinner. Even though we cooked the food, the soldiers did not offer us any. In the evening we had to keep working. They kicked us saying "walk faster, walk faster." One of the soldiers tried to rape me but I pushed him hard and he fell down. He got very, very angry. He beat me but said this time he would spare my life because I had lots of work still left to do. I still have scars from the beating. The solders said that our lives were in their hands. That they could do anything to us. They let us go but said they would be back as they had another task for us. I felt that next time they might kill us so I could not stay in the village any longer and I left. I will never forget this incident. Whenever it is getting dark I remember it, I feel so overwhelmed and scared when I think about it.*[556]

269. Those detained for forced labour were kept in inhuman conditions.[557] A number of individuals told the Mission that, when detained for forced labour, they had to bring food,[558] were given insufficient food or food of poor quality[559] or were not able to eat at all.[560] Individuals reported they did not have access to water when needed and were kept in inadequate accommodation, including in the open air without bedding and without adequate sanitary facilities.[561]

270. Children detained for forced labour were also subjected to ill-treatment and inhuman conditions of detention.[562] For example, a child from Mongkaing Township, Shan State, who was subjected to forced labour in 2011 when she was around 13 years old, described being beaten after asking for water:

> *In 2011, my father was taken for forced labour even though he was old and sick. They did not give him proper food and drink. Two days after he returned home, he died. Later I was taken for forced labour. I had to carry heavy bags for three days. When we asked for food, the soldiers got upset. I asked for water and they beat me for it.*[563]

271. Individuals subjected to forced labour were also sometimes required to fight or participate in hostilities. Some individuals told the Mission that, during forced labour, they were made to wear Tatmadaw uniforms or given guns.[564] For example, one individual from Kunhing Township, Shan State, reported how he was given a gun after fighting broke out while he was doing forced labour in April 2012:

> *The Tatmadaw were staying overnight in our village and then next morning they said they needed porters and four of us had to go with them. While walking we encountered the SSA-S and fighting started. The Tatmadaw gave me a gun and told me to shoot at the Shan soldiers, but I did not know how to shoot. I refused and the soldiers beat me.*[565]

272. Individuals acting as porters were frequently forced to carry weapons,[566] and one individual reported being required to load ammunition into weapons.[567]

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[556] DI-065.

[557] See this chapter, section A.5: Arbitrary deprivation of liberty and enforced disappearance.

[558] PI-003, PI-005, PI-007, PI-022.

[559] PI-019, PI-020, PI-080, PI-083, PI-085.

[560] PI- 096, QI-098.

[561] See this chapter, section A.5: Arbitrary deprivation of liberty and enforced disappearance.

[562] DI-063, DI-071, PI-022.

[563] DI-071.

[564] PI-011, PI-020, PI-085.

[565] PI-011.

[566] DI-063, DI-064, PI-022, PI-076, PI-080, PI-096, PI-099.

[567] PI-080.

273. In some cases reported to the Mission, individuals were taken from their villages for forcible recruitment into the Tatmadaw.[568] One of these individuals was a child.[569] Credible information received by the Mission, however, indicates that the Tatmadaw have forcibly recruited adults and children throughout the reporting period.[570] With regard to the recruitment of adults, it needs to be examined whether these and other cases amount to forced labour, or were imposed in manner that would render the recruitment unlawful or arbitrary (for example, not prescribed by law; implemented in a way that is arbitrary or discriminatory; functions and discipline of recruits not based on military needs and plans; or not challengeable in a court of law). The Mission notes that efforts have been made to address the issue of child recruitment.[571] In 2012, the Government and the United Nations signed a joint action plan to end the recruitment and use of child soldiers. In 2018, it was reported that the total number of released children since the signing of the plan was over 924.[572] In 2018, the Tatmadaw remained listed as a perpetrator of recruitment and use of children in the Secretary-General's report on children and armed conflict but it is recognised as having put in place measures to improve protection of children during the reporting period.[573]

7. Forced displacement, confiscation and destruction of property, and denial of humanitarian assistance

274. The complete disregard for the interests and well-being of the civilian population in Kachin and Shan States, particularly, but not only, in areas of active conflict, is further demonstrated by patterns of movement restriction and forced displacement; the confiscation and destruction of land and property; and the denial of humanitarian relief.

(a) Legal framework

275. It is a violation of international humanitarian law for a party to a non-international armed conflict to order the displacement of the civilian population, in whole or in part, unless an evacuation is required to protect the security of the civilians involved or because of imperative military reasons.[574] This displacement includes forced transfer caused by physical force, the "threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons, or by taking advantage of a coercive environment".[575] Parties to a conflict also have a duty to ensure respect for their obligations under international law so as to prevent displacement caused by their own acts.[576] Unlawful transfer, deportation or displacement of civilians in non-international armed conflicts can constitute a war crime or crime against humanity.[577]

276. Even if ordering an evacuation is justified because relocation is necessary to clear a combat zone, the party responsible for the transfer or evacuation must ensure, to the greatest practicable extent, proper accommodation for the protected persons and "satisfactory conditions of hygiene, health, safety and nutrition".[578] Displaced persons have

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[568] PI-012, PI-016, PI-080, PI-081.

[569] PI-016.

[570] K-070, K-072.

[571] Children must never be recruited into armed forces. This applies at a minimum to those under 15 years of age. Voluntary recruitment of children 15 years and above into State armed forces is not prohibited by international law though preference should be given to recruiting those closest to 18 years of age. See CRC, art. 38(2)(3).

[572] UNICEF, "Seventy-five children and young people released by the Myanmar Armed Forces" (3 September 2018). Also, S/2017/1099.

[573] A/72/865, S/2018/465.

[574] ICRC/Customary IHL, rule 129B.

[575] ICTY, *Prosecutor v. Stakić*, IT-97-24-T, Appeals Judgment, 22 March 2006, para. 281. This language was adopted and appears in the footnote of the ICC Elements of Crime, art. 7(1)(d).

[576] Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), principle 5. See also, ICRC/Customary IHL, rule 129.

[577] See chapter VIII: Crimes under international law.

[578] ICRC/Customary IHL, rule 131.

a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.

277. It is a violation of international humanitarian law if a party to the armed conflict, in the context of and associated with the conflict: (i) destroys or seizes property of an adversary, unless the destruction or seizure is required by imperative military necessity[579]; (ii) attacks civilian objects, unless and for such time as they are military objectives[580]; (iii) appropriates a town or village's property for personal use (pillage)[581]; or (iv) fails to respect the property of displaced persons, including failing to protect against destruction or the arbitrary and illegal appropriation, occupation or use of property or possessions left behind.[582] Such violations may constitute war crimes.[583]

278. Under international humanitarian law, parties to armed conflicts are required to allow and facilitate rapid and unimpeded humanitarian relief for civilians in need, and are in breach when they: (i) impede access of humanitarian relief to civilians; or (ii) arbitrarily deny consent to enable humanitarian relief operations; or (iii) restrict freedom of movement of humanitarian relief personnel, other than temporarily when it is required by imperative military necessity.[584]

(b) Findings

Violations related to movement of civilian populations

279. The Mission received accounts of individuals being ordered to leave their village by the Tatmadaw; being physically prevented from returning; or ordered not to return.[585] For example, a man from Loilen District, Shan State, reported that in November 2011 the Tatmadaw came to his village and told the villagers "you are no longer allowed to farm and you all need to leave the village immediately, otherwise we will burn your homes".[586] The Tatmadaw soldiers later burned down his house, along with others in the village. In another case, the Mission was told how, in February 2013, a village in Bhamo Township, Kachin State, was attacked by the Tatmadaw and five houses were burned down. The victim escaped and later tried to return, but found that he was not able to go back because soldiers had closed the entrance to the village and would not let civilians past.[587]

280. Other individuals recounted that conditions in their villages had become so difficult that it was impossible to remain or to return after they had fled attacks. The Mission identified a widespread practice of attacking, destroying and looting civilian property,[588] including intentional destruction, or burning, of civilian houses.[589] Victims returning after fleeing attacks on their villages found their houses and livelihoods destroyed, compelling them to leave.[590] For example, one woman from a village in Namkhan Township, Shan State, narrated how her family tried to stay in her village, but eventually the village was destroyed and they had to leave:

> *In December 2015 and January 2016 there were lots of planes flying overhead, and we could hear shooting and bombing. In January 2016, the Tatmadaw attacked our village. Many of the villagers fled but we decided to stay. But in February, Tatmadaw soldiers entered the village. They arrested some people and then shot at*

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[579] ICRC/Customary IHL, rule 50.

[580] ICRC/Customary IHL, rule 10.

[581] ICRC/Customary IHL, rule 52.

[582] ICRC/Customary IHL, rule 133; Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), principle 21(3).

[583] See chapter VIII.C: War crimes.

[584] ICRC/Customary IHL, rule 55 and 56.

[585] PI-026, PI-042, PI-082, PI-087, PI-104, V-123, V-124.

[586] PI-082.

[587] PI-026.

[588] See this chapter, section A.1: Conduct of hostilities in flagrant disregard of civilian life and property.

[589] DI-058, DI-066, PI-026, PI-029, PI-049, PI-080, PI-082, PI-086, PI-087, QI-092, QI-094.

[590] PI-029, PI-080, PI-087, QI-092.

> *us indiscriminately as we were trying to flee. There was no KIA post in the village – the nearest post is several hours away – they were shooting at civilians. We fled into the forest. The next morning we went back, but our village was entirely destroyed – some of the houses had been burned, others kicked down. The situation had become insufferable and we had to leave.*[591]

281. Another person, who left his village in Namtu Township, Shan State, in 2012, described how the intentional destruction of food supplies made survival difficult, forcing him to move to a camp for internally displaced persons:

> *The Tatmadaw had a huge post in our area and there was lots of fighting. The military would come and look for our rice stocks and destroy them. When aid agencies would distribute provisions, the military would come and destroy those as well. They even killed our pigs. We left because we had nothing to eat – the military was making it impossible to survive in our village.*[592]

282. The context in which the displacements occurred strongly indicates that there were no imperative military or security reasons for such displacements. As explained above, the Tatmadaw intentionally, frequently and systematically directed attacks against the civilian population or individual civilians and terrorized the civilian population, including through killings, torture and sexual violence. These tactics and practices have fuelled large-scale displacements in Kachin and Shan States during the reporting period and constitute a complete failure by the Tatmadaw to observe its obligations under international law, including to prevent displacement caused by its own acts. One person from Muse Township, Shan State, said, "No one lives in my village now - because the Tatmadaw were coming often - no one wanted to live there anymore so they all moved out. It was not safe for men or women and we still do not dare to go back."[593]

283. The Mission further notes that the relocation and destruction of entire villages in northern Myanmar was extensively reported in the period prior to 2011.[594]

284. The Mission also received credible information on incidents where civilians who wished to leave unsafe areas were prevented from doing so or denied safe passage, including, in at least one case, despite the Tatmadaw itself having explicitly ordered the displacement.[595] In that incident, in Tanai Township, Kachin State on 5 June 2017, the Tatmadaw dropped a leaflet ordering the evacuation by 15 June 2017 of a large area, where an estimated 100,000 civilians resided, because the Tatmadaw would be conducting "area clearance operations" due to unauthorised mining affecting the environment.[596] The text of the leaflet included the following:

> *Within Ta'ang township ... [list of 10 mines]... are not the nationally legitimized jade mines. Mining, digging and gold extraction not only negatively affect the environment, but also impact upon the ecosystem of the Ta'ang region. For this reason, the Tatmadaw will be carrying out area clearance operations in the near future.*
>
> *Therefore, local citizens and temporary workers living in the jade mines are to leave the area by 15 June 2017. Anyone who does not vacate the area by the established date will be considered an accomplice of the Kachin insurgent group, the KIA. During the area clearance operation, the government does not wish citizens to die or be injured. Therefore, we would like to make this public announcement.*

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[591] PI-087.

[592] PI-035.

[593] QI-095.

[594] E.g. in 2010, the then United Nations Special Rapporteur on the human rights situation in Myanmar, Tomas Quintana, stated that humanitarian and human rights groups had documented the destruction and forced relocation of over 3,500 villages and hiding sites in eastern Myanmar since 1996. See A/HRC/65/368, para. 49; for similar figures, see A/61/369, para. 44 and A/HRC/4/14, para. 54.

[595] K-063.7, K-063.8, PI-049, PI-103. See also this chapter, section A.8: Emblematic incidents (Tanai).

[596] Copies on file with the Mission.

285. It is difficult to see the military necessity of such a broad order. The leaflet contains implied threats and appears to merge civilians and fighters. In any event, the Tatmadaw also did not ensure proper transfer, evacuation and accommodation for civilians. Instead, four of the five exit routes were blocked and credible information indicates that some displaced individuals were only allowed to leave on the condition that they did not travel to Tanai town but rather to Kawng Ra, which was unsafe and subject to active conflict.[597]

286. The Mission further received recent, credible information on one incident where the Tatmadaw forced villagers who had fled to go back to their villages despite not wanting to return due to safety concerns.[598] One person described how she and 160 others from Man We and Hlaing Naung Hku villages in Hpakant Township, Kachin State, were detained by the military for several days in April 2018, after fleeing their villages and were then forced to return against their wishes:

> *We fled our villages on 11 April 2018 and on the 12 April 2018 we came across the Tatmadaw in the forest. They stopped us and asked us questions, they made us cook for them and build a tent. We were getting ready to sleep when they made us move again. They walked us to trucks and then drove us to a field. They made us stay with them for five days and kept asking questions about the KIA. We did not have enough food, only one meal a day. On 16 April 2018, the commander said we should go back to our village. We didn't want to go back because it is not safe but the commander forced us. The soldiers followed us back to the village to make sure we went back. When we arrived at our village soldiers took our livestock and belongings.*[599]

287. Following this, they left the village once again due to the continuing conflict, but were not allowed to set up IDP camps by the Tatmadaw, so they stayed in a local church. Fighting in the area later ceased, and the villagers wanted to return to their village. However, the Tatmadaw would not permit them to return. The Mission further understands that there have been other incidents where displaced persons have been put under pressure to return to their villages before they felt comfortable doing so.[600]

288. General restrictions on freedom of movement have also had a significant impact on the ability of civilians to access livelihoods and basic services.[601] Formal restrictions on movement include checkpoints, accompanied by documentation checks, and curfews.[602] In addition, in one case in December 2016, residents of the town of Monekoe, Muse Township, Shan State, were issued with cards to prove their residence and were only allowed to enter and leave if they were in possession of these cards.[603] Individuals also reported limiting their own movements, including to farmland or tea plantations, because they were afraid of nearby fighting or because of landmines.[604] For example, one person from Namhsan Township, Shan State, reported that during fighting in December 2017 she could not go to her tea plantation. She explained that a curfew was in place from 6am to 6pm in their village and, if people were seen outside after curfew, shots would be fired at them.[605] Credible information received by the Mission also indicates that individuals holding identity documents issued by EAOs have been afraid to flee conflict areas, or return to check on property, for fear of documentation checks or being stopped because of their ethnicity.[606]

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[597] K-063.7, PI-049.

[598] K-063.9, PI-104, V-135.

[599] PI-104.

[600] QM-002, V-331.

[601] PI-046, PI-073, PI-097, V-142. See also this chapter, section A.8: Emblematic incidents (Tanai).

[602] K-064, V-142.

[603] See this chapter, section A.8: Emblematic incidents (Monekoe).

[604] PI-046, PI-094, PI-097.

[605] PI-097.

[606] DI-061, K-064, V-136, V-142.

Land confiscation and violation of property rights of displaced persons

289. Credible information received indicates widespread violation of the obligation to respect the property rights of displaced persons. There is a practice of attacking, destroying and looting civilian property after individuals have fled.[607] In some cases people left their homes because of land confiscation.[608] In others, the Tatmadaw or other actors confiscated lands after the individuals had fled and were internally displaced.[609] For example, one individual from Laukkaing Township, Kokang Self-Administered Zone, reported that, after his village was attacked by the Tatmadaw in August 2013 and while the villagers were displaced, the Tatmadaw took over their land:

> *One day in 2013, the Tatmadaw attacked our village. The village chief went to talk to the soldiers to try to stop the fighting but they killed him. There was gunfire so we ran into the forest to hide for one night. The next day we went back to the village but our house was burned and all other houses in the village were burned too, so we had to leave. After we had left, the Tatmadaw took over the farmland.*[610]

290. Another person displaced from Waigmaw Township, Kachin State in 2011 explained that her village is now abandoned and there is a new Tatmadaw post there.[611] The Mission has also received credible information that other actors, including corporations, have taken over land of displaced individuals.[612]

291. Some internally displaced persons told the Mission that they did not know what had happened to their land and property as they had not been able to return since they were originally displaced, which in many cases was several years earlier.[613] Displaced individuals are concerned that they may be unable to prove ownership over their land should conditions for returns be established.[614] There are many impediments to this, including: lack of formal land ownership documents; documents being lost or destroyed during displacements; possession of non-recognised ownership documents issued by ethnic armed organizations; lack of recognition of customary forms of land ownership; and lack of tax receipts as individuals were displaced and therefore unable to work the land. The situation may be further complicated by the legal framework governing land ownership and resolution of land disputes.[615]

292. Land has also been confiscated by or for the benefit of the Tatmadaw from non-displaced individuals without any proper process or compensation, including in areas where there was no active fighting in Kachin and Shan States.[616] For example, an individual from Puta-O Township, Kachin State, reported how his land was taken in 2014:

> *My land was inherited from my great-great grandfather. We used to have only one military camp in the area but more were built around 2002 and this was when land confiscation started. Between 2003 and 2005 two whole villages were forced to move by the Tatmadaw and the land was confiscated. In early 2014, a government official called me and showed me a letter. He said my farmland would be confiscated for "security reasons." The letter said I would not be given alternative*

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[607] See this chapter, section A.1: Conduct of hostilities in flagrant disregard of civilian life and property.

[608] PI-016, PI-082, QI-082.

[609] K-142.1, K-143, PI-010, PI-055, PI-073, QI-092, QM-018, SI-002, V-144. See also this chapter, section B: Patterns of violations and abuses committed by non-State armed actors.

[610] QI-092.

[611] PI-052.

[612] K-142.1, QM-014, V-143.

[613] PI-052, PI-056.

[614] PI-031, V-143.

[615] PI-031, PI-048, QM- 014, V-145, see also, Durable Peace Programme, *Displaced and Dispossessed, conflict-affected communities and their land of origin in Kachin State* (May 2018).

[616] PI-032, PI-048, PI-077, QI-078, V-143 see also, Human Rights Watch, *"Nothing for our Land", Impact of Land Confiscation on Farmers in Myanmar* (July 2018).

> *land, and the official said all lands belong to the government. I could do nothing and there was no compensation - they just took my land.*[617]

293. Individuals consistently reported that in their villages they were required to provide food or cook for the Tatmadaw,[618] or that the Tatmadaw would come and take their food or livestock as they wished, placing a constant strain on the their resources and ability to survive.[619] For example, one individual from Mongkaung Township, Shan State, described how villages had to give food to the Tatmadaw and witnessing them taking food from other farmers:

> *A military camp was not very far from our village. Each villager had to take food to the Tatmadaw – we took it in turns. Sometimes my mother had to cook for the soldiers too. One day I took some chickens to the military base but they said I arrived late. They kept me and made me work for them. I worked for five days in the military base and then for five days I walked with them from village to village. Each day I saw the military take food from farmers. One farmer begged to be given his food back but they just hit him.*[620]

294. In some cases, the Tatmadaw would also temporarily stay in villagers' houses.[621] For example, one individual from Laukkaing Township, Kokang Self-Administered Zone, described how soldiers would come regularly, as much as once a week, and stay in one of the village houses. The villagers would have to cook for the soldiers and would sleep in neighbours' houses or in the forest until the soldiers left.[622] In 2015, this became more frequent and eventually the soldiers confiscated her families' land and house and started to grow vegetables.[623]

Arbitrary denial of humanitarian relief

295. The Mission has amassed a large volume of credible information indicating that the Government and Tatmadaw have consistently arbitrarily denied consent for humanitarian relief operations and restricted the movement of humanitarian relief personnel for long periods. For example, in June and July 2015, fighting between the KIA and Tatmadaw displaced around 1,400 individuals in Sumprabum Township, Kachin State. Despite displaced individuals lacking sufficient access to adequate food, shelter, drinking water and medical supplies, and repeated requests for access to provide life-saving humanitarian relief from local and international organizations, no access was granted until January 2016, more than six months later.[624]

296. Access for humanitarian relief operations to persons in need has significantly deteriorated during the reporting period, and is now at its lowest point in four years.[625] To deliver relief, conduct assessments, or carry out other activities, international humanitarian organizations are required to seek travel authorisations via a complex system involving several layers of authority, both civilian and military, including the President's Office.[626] The United Nations have not been granted travel authorisations to deliver humanitarian relief to the more than 40,000 internally displaced persons in areas beyond government control since June 2016. They have now had no access for more than two years, despite

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[617] QI-082.

[618] PI-016, PI-020, PI-058, PI-081, PI-093.

[619] DI-072, PI-010, PI-015, PI-020, PI-074, PI-111, QI-078, QI-080.

[620] PI-020.

[621] PI-016, PI-020.

[622] PI-016.

[623] Ibid.

[624] K-063.30.

[625] K-064, K-069.1.

[626] QM-002. Interlocutors informed the Mission that, while the process varies to some extent, travel authorisations are generally sent to an organization's line ministry (which varies depending on the organization). The line ministry forwards requests to the President's Office for a decision. The President's Office asks the opinion of the Ministry of Defence and the Ministry of Home Affairs and in some cases the relevant state governments.

previously having had access to these areas, with indications that the needs of the most vulnerable displaced persons are not being met.[627] The Government has proposed that individuals cross conflict lines to access assistance, which would require displaced persons, the majority of whom are women and children, to undertake repeated long and dangerous journeys across conflict affected areas.[628] Organizations requesting permission to undertake relief operations to these areas have reportedly been told that, if they want access, they should tell the ethnic armed organizations to sign the National Ceasefire Agreement.[629]

297. In Government-controlled areas, the international staff of international humanitarian organizations are granted travel authorisations primarily for urban centres, with the result that they are unable to access the majority of displaced individuals who are located in other areas.[630] National staff have also been subject to increasing restrictions.

298. Requests for authorisation to travel to deliver humanitarian relief are often refused, without reasons, or no formal response at all is received.[631] Distributions of life-saving relief items are routinely blocked.[632] While local organizations have some access to both Government and non-government controlled areas, they face increasing restrictions[633] and are also unable to access certain areas.[634] In some cases, even when travel authorisations are granted, the Tatmadaw prevents deliveries being carried out, including in areas where there was no active fighting.[635]

299. The Mission has also received credible information that humanitarian relief personnel in Kachin State have been formally threatened with prosecution under the Unlawful Associations Act, after travelling to a non-government controlled area in 2018 to provide relief, and have been told not to travel to the area in future.[636] In addition, the Mission has received one report of individuals being beaten and prosecuted after they tried to deliver humanitarian relief.[637]

300. On the ground, the denial of humanitarian relief means displaced persons are left without adequate shelter for long periods, including in difficult weather conditions, such as during heavy rains, and face food shortages.[638] The Mission corroborated an incident in April 2018 in Tanai Township where 2,000 individuals, from Sut Yang, Sut Ya and Awng Lat villages, were trapped in the forest for nearly a month, in dire conditions, without access to assistance. Those trapped included pregnant mothers, children, elderly people and sick and injured individuals.[639] One villager recounted the difficult conditions which led to the deaths of two children:

> *On 11 April 2018, there were airstrikes and shelling on our village. We fled into the forest. We thought the shelling would stop but it was continuous. We ended up staying in the forest for four weeks. We moved several times because of shelling and we were afraid of the soldiers who were behind us. Sometimes there were drones and planes overhead, but they did not provide any assistance, they were just watching us. It was difficult in the forest. In the place where we stayed for the first three days, there was no water because the streams had dried out. Later, we only had access to dirty water, and many people became sick with diarrhoea. Three women gave birth in the forest, but one of the new-born babies died at 20 days old.*

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[627] K-069.1, V-155.

[628] K-069.1, K-069.2, QM-002, A/HRC/34/67, para 52.

[629] QM-002.

[630] K-069.1, V-156.

[631] Ibid.

[632] Ibid.

[633] Ibid. K-142.2, QM-014, V-157.

[634] See also this chapter, section A.8: Emblematic incidents (Tanai).

[635] V-147, V-308.

[636] K-146.1.

[637] K-146.5.

[638] K-063.30, PI-029, PI-030, PI-103, V-156. See this chapter, section C: Impact of conflict, violations and abuses on civilians.

[639] See this chapter, section A.8: Emblematic incidents (Tanai).

> *Another five-year old girl died while her mother was carrying her. We faced many hardships.*[640]

301. The lack of humanitarian access has led to dire conditions in some camps for internally displaced persons, contributing to trafficking and raising other protection concerns.[641] One young woman, who spent three years in a camp for internally displaced persons in a non-government controlled area of Kachin State before leaving the country in 2014, cited the lack of food as the main reason for her decision to leave:

> *I spent three years in the camp but then the Tatmadaw blocked all humanitarian aid. After that, each of us would only get 4kg of rice per month and there was almost no other food, only rice. Because there was no food, I had to leave and went to Thailand, and then Malaysia.*[642]

302. The Mission received credible information that a convoy of vehicles from the Myanmar Red Cross was attacked on 17 February 2015 and for a second time on 21 February 2015 in Kokang Self-Administered Zone, Shan State.[643] The attacks caused several Red Cross personnel and civilians to be injured, with one Red Cross volunteer later dying from the injuries he sustained during the attacks.[644] The Government reportedly stated that the MNDAA was responsible for the attacks, which was denied by the group.[645] It was not possible for the Mission to verify which party to the conflict was responsible. Following the first attack, Kokang Self-Administered Zone was placed under martial law until 17 November 2015.[646] Humanitarian access to the 80,000 individuals displaced by fighting between the MNDAA and the Tatmadaw was not granted until July 2015.[647] The Mission received allegations that serious violations had taken place in the area during this period but was unable to verify them.[648]

303. The Mission also received one report of Tatmadaw soldiers intercepting and stealing shipments of medicines intended for internally-displaced persons, but it was unable to verify this.[649]

304. The Mission received credible accounts of the Tatmadaw denying or delaying access to medical care for injured civilians.[650] In one well-known case, verified by the Mission, on 13 September 2012, a Tatmadaw Battalion Commander said that Ja Seng Ing, a 13-year old girl who had been shot by the Tatmadaw in Sut Ngai Yang village, Hpakant Township, Kachin State, could not be taken to hospital until all soldiers had left the village. They left in groups of five to 10 soldiers at a time, taking over an hour, before she could be taken to the hospital.[651] In another case, an individual described how her village in Namkhan Township, Shan State, was attacked by the Tatmadaw in May 2017 and afterwards she had to negotiate to collect the injured residents and take them to the hospital after an attack on her village:

> *Afterwards, we had to negotiate with the Commander to go and rescue the injured. The Commander said he would let women be rescued but that anyone else would be killed. We were able to enter the village and collect my relative. She was in very bad shape. We took her to hospital and she had to stay there several months. Now she can hardly move and cannot work.*[652]

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[640] PI-103.

[641] See this chapter, section C: Impact of conflict, violations and abuses on civilians.

[642] PI-030.

[643] K-069.3, V-158.

[644] IFRC, "Myanmar Red Cross Society mourns the death of a volunteer" (3 April 2015).

[645] Moe Zaw, "Myanmar, Kokang Rebels Spar Over Red Cross Attack" (VOA, 18 February 2015).

[646] K-063.23.

[647] K-064.1.

[648] SM-001, V-159.

[649] V-144.

[650] PI-064, PI-073, PI-105.

[651] K-131, PI-105.

[652] PI-073.

305. An announcement from February 2018, a copy of which was seen by the Mission, appears to indicate that there is an official policy in at least some areas of denying medical assistance to injured fighters. The letter sent by the Township Administrator in Muse Township, Shan State, to various township authorities, including the health department, refers to a bilateral agreement reached between the Union Government and China. It informs administrators and agencies to report to the nearest Tatmadaw base any injured fighters found without delay "and to make sure insurgents do not receive any treatment," and that Chinese hospitals would also not accept wounded fighters.[653]

8. Emblematic incidents

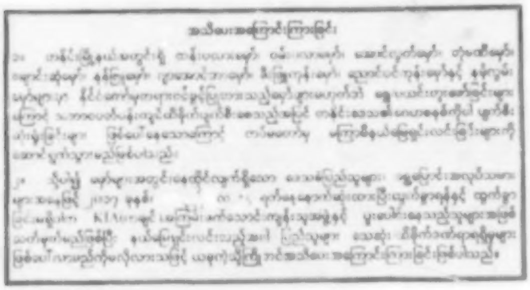
306. This section presents in greater detail two situations that have occurred in Kachin and Shan States during the reporting period. They illustrate how the hostilities, and the conduct of the Tatmadaw in particular, gives rise to the types of gross human rights violations analysed above. They show how civilians are often victims of multiple violations concurrently.

(a) Tanai Township, Kachin State – November 2017 to April 2018

307. The incidents that have taken place in Tanai Township, Kachin State, from November 2017 to April 2018 are illustrative of the manner in which the Tatmadaw's operation directly and deliberately affect civilians. The area of Tanai that is the focus of the Tatmadaw offensive is controlled by the KIA. The Tatmadaw's stated aim is to clear out the "illegal" mines in the area that provide a lucrative source of income for the KIA, and as such the military operations are in relation to control over these natural resources.[654] Mining in the area employs an estimated 100,000 people.[655]

308. Before the "clearance operations" began, the Tatmadaw dropped leaflets on 5 June 2017 to warn villagers living near the mining zones to clear the area within 10 days, causing civilians to flee. It then launched military offensives against key positions of the KIA. When the deadline passed, the Tatmadaw closed off routes to Tanai town, leaving remaining civilians at risk, and over the same period, the Tatmadaw restricted the delivery of rice and fuel to inhabitants of Tanai, creating food shortages.[656]

Photo of leaflet dropped by the Tatmadaw on 5 June 2017 in Tanai Township[657]



309. For the next five months, the Tatmadaw and the KIA were engaged in a series of clashes, during which the Tatmadaw engaged in indiscriminate attacks on villages and

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[653] K-146.2.

[654] Primarily gold and amber but also jade, copper and ruby mines.

[655] PI-049, PI-103, V-62.

[656] Ibid. See this chapter, section A.7: Forced displacement, confiscation and destruction of property, and denial of humanitarian assistance.

[657] See for full translation of the text, this chapter, section A.7: Forced displacement, confiscation and destruction of property, and denial of humanitarian assistance.

committed extrajudicial killings, torture and rape among other violations. A number of villages were burned and thousands were displaced as a consequence.[658]

310. Clashes began in June 2017 but fighting intensified in November 2017, reaching a peak in January 2018. On 22 November 2017, the KIA set up a base in a church in De Kaw village in Tanai, and on the same day airstrikes were conducted by the Tatmadaw, which did not appear to target the KIA base. An aerial bomb exploded next to a civilian's house, killing a young child and a man. The next day, Tatmadaw soldiers conducted an operation in the village, as apparent retribution for battlefield casualties, which saw the arrest and detention of some villagers, and the burning and destruction of the village. It caused villagers to flee and be displaced.[659] The detained villagers were divided into small groups, beaten and tortured while questioned about KIA membership.[660] One of the victims gave the following account:

> *The Tatmadaw tied us up with ropes and pointed their guns at our heads. They accused us of being with the KIA and requested proof that we were not. It was hard for us to give them the answers they wanted. One of the soldiers told me that they had information that I was involved with the KIA and provided them with assistance, which I denied. The soldier shouted at me, calling me "dog beggar", which means "person of very low value" in Myanmar. I was on my knees. The soldier standing in front of me was asking questions while the one behind beat me. I was beaten in the back, and hit on the head with the butt of a gun. All villagers detained were on their knees. We were terrified.*[661]

311. Throughout this period, a number of villages in Tanai were subject to artillery and airstrikes.[662] For example, Nam Kawn village, 20 kilometres from Tanai town, was targeted by aerial bombing and heavy artillery mortar shelling from 22 to 27 January 2018, and with heaving fighting from 25 to 27 January.[663] The village is located in the Zeephury Kone area, where both amber and gold are mined,[664] and which is controlled by the KIA.[665] Reliable reports indicate that several aerial bombs were dropped on the village on 26 January 2018, destroying houses[666] and causing two civilian deaths and four injuries, including three women.[667] The nearest KIA posts were located several miles away, and as such there was no apparent military target.[668] One of the injured victims, explained how her house was completely destroyed following an airstrike, and both she and her sister were injured. She spent a month in hospital.[669]Another witness stated that Tatmadaw soldiers, in the course of their military operations that day, deliberately shot at or otherwise targeted the civilian population:

> *People fled from the bombings, and as they were fleeing, the military was shooting at them. People fled the area, some to the IDP camps. I think the military operation was designed to make villagers flee the town.*[670]

312. As the Tatmadaw progressed into KIA controlled territory, strategic KIA posts were targeted. On 27 January 2018, a group of Tatmadaw soldiers supported by Lisu militia killed five, possibly six, men at a KIA tax post at Aung Ja village. Shortly after,

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[658] K-069.1.
[659] DI-066, PI-086, PI-088.
[660] DI-066, PI-086, PI-088.
[661] DI-066.
[662] DI-061, PI-046, PI-063.
[663] K-142; T. Miles, "U.N. concerned about heavy fighting in Myanmar's Kachin state" (Reuters, 6 February 2018).
[664] DI-061.
[665] PI-045, PI-049, V-018.
[666] PI-045.
[667] DI-061, DI-062, PI-043, PI-049, PI-053.
[668] DI-061.
[669] DI-062.
[670] PI-043.

approximately 200 Tatmadaw soldiers entered the area[671] and eight civilians, including at least two women, were detained by the Tatmadaw and Lisu militia. They were beaten on their backs with an iron rod over the course of some hours while their hands were tied and some were blindfolded. During this time they were questioned, including in relation to the routes to mining areas. Five men from the group were then extrajudicially killed by gunfire while the other three detainees remained lying on the floor.[672]

313. The on-going hostilities caused displacement of civilians throughout this period. In January 2018, over 3,500 civilians attempting to leave the area of ongoing hostilities near amber mining villages in the "Pat Maw" area, became trapped by the Tatmadaw without food, supplies or latrines for a period of up to 18 days at the "Samat" gate. Religious groups bearing food for the trapped civilians were denied access by the military. Personal belongings, including mobile phones, motorbikes, amber and money were taken by soldiers.[673] This happened in an area with active landmines, which caused at least two civilian deaths.[674] The first group of civilians, approximately 700 women and 50 civilians over the age of 50 were released, following a letter from two Members of Parliament to the President requesting safe passage for the trapped civilians.[675] Civilians continued to be released in groups over the following days until 9 February 2018.[676]

314. Throughout the period, the Tatmadaw subjected civilians to ill-treatment and torture, targeted on the basis of their ethnicity and often questioned about the KIA. In December 2017, several men in uniform entered the house of a man in Naumbyu village. They asked him if he was Kachin and was then beaten repeatedly and threatened with being killed. He saw at least 10 other men subjected to similar treatment. Their hands were tied and they were led away, but he managed to escape in a forest.[677] Another victim reported being taken from the village of Dar[illegible] Thu by a group of about 10 Tatmadaw soldiers and forced to clean, catch fish and cook for them. He was beaten while being questioned about whether he was a rebel.[678] The Mission also received a credible report of a group of Tatmadaw soldiers gang raping and then killing two girls in the forest.[679]

315. After a temporary lull, the Tatmadaw launched a further offensive to consolidate control over the mining area, with four airstrikes, and gunfire on the village of Awng Lat on 11 April 2018, killing one civilian and injuring at least two others. Reports indicate that hundreds of Tatmadaw soldiers seized the area, causing approximately 2,000 civilians to flee to fields, where some stayed for three days while the shelling continued.[680] A group of villagers were then forced to stay in very difficult conditions in forest areas, to avoid aerial attacks and the presence of soldiers. At least one elderly man, one child and one new born baby died from lack of food and medicines.[681]

(b) Monekoe, Shan State – November 2016 to early 2017

316. The incidents that occurred around Monekoe, Muse Township, Shan State, from November 2016 to early 2017, also illustrate how the civilian population is subjected to multiple violations concurrently or consecutively during active conflict. This includes mass arrest and detention, extrajudicial killings, and indiscriminate airstrikes and aerial bombardments or attacks in violation of the principle of precaution.

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[671] PI-053, PI-054, PI-059, SI-004, V-018.

[672] PI-053, PI-053, SI-004, V-018.

[673] DI-061, PI-045, V-018.

[674] DI-061, PI-045, PI-046.

[675] DI-061, V-018.

[676] DI-061, PI-045.

[677] PI-059.

[678] PI-079.

[679] PI-069, see this chapter, section A.4: Sexual and gender-based violence.

[680] K-069.1, PI-103, V-063.

[681] PI-103, V-063, see this chapter, section A.7: Forced displacement, confiscation and destruction of property, and denial of humanitarian assistance.

317. On the night of 19 November 2016, elements of the Northern Alliance attacked Monekoe town.[682] The Northern Alliance captured most of Monekoe with the exception of a hilltop military base held by the Tatmadaw.

318. Following this, the Tatmadaw conducted the mass arrest and detention of civilians. On 20 November 2016, Tatmadaw soldiers from the 99th Light Infantry Division went from house to house in Man Jat village, Monekoe and arrested more than 100 people, who were then forced to walk to a military camp on the hilltop.[683] One interviewee was asked by the soldier who arrested him, "It is impossible that you didn't know about the attacks, why didn't you inform us?"[684] Several individuals were accused of being spies, and a few were specifically accused of being affiliated with the MNDAA, tied up and beaten.[685] About 12 hours later the Tatmadaw released the women and children, as well as some Chinese citizens, leaving approximately 70 to 80 men detained. Several hundred soldiers as well as militia members were stationed at the military camp.[686]

319. The detainees were forced to lie on the ground, day and night, between two wire fences, placing them between the Tatmadaw base and Northern Alliance troops.[687] They were told not to make any noise or they would be killed.[688] Intense fighting between the Tatmadaw and the Northern Alliance outside the military camp took place during the 13 days the group were held. Tatmadaw troops threw grenades over the heads of the detainees, several of which fell on them after getting caught in the trees, killing at least two individuals and injuring others.[689] The injured were not released to seek medical attention.[690] One detainee saw a mortar shell land among the detainees, although it did not explode.[691] A 90 year-old detainee was witnessed being killed when he tried to escape during an exchange of fire.[692] Detainees were exposed to the elements with no shelter, sleeping on the ground. They had no access to washing facilities and no sanitary facilities, initially urinating in the area they were detained and later in a pit dug behind the second fence. Detainees were also initially not provided food for several days.[693] When members of the Northern Alliance gained access to part of the military base on 4 December 2016, the civilians were able to escape.[694] The placing of this group of civilian detainees in the line of fire is a clear example of the Tatmadaw not taking all feasible precautions to protect the civilian population under their control against the effects of attacks, one of the fundamental principles of international humanitarian law.[695] In this instance, it may also amount to the prohibited use of human shields.[696]

320. The Mission received credible accounts of civilians being intentionally killed by the Tatmadaw in the Monekoe area during this period.[697] For example, one man who was detained in the military base, stated that after they escaped he witnessed another man being shot at and then killed by a knife by one of the Tatmadaw soldiers.[698] Two cases of enforced disappearance were also corroborated, in both cases following arrest by the Tatmadaw.[699]

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[682] DI-058, DI-060, K-133.1, K-133.2, K-133.3, K-133.24, V-056.

[683] DI-058.

[684] DI-060.

[685] DI-058.

[686] DI-058, DI-060, K-133.6, K-133.23.

[687] DI-058, DI-060, K-133.23, V-170.

[688] DI-060.

[689] DI-058, DI-060, K-133.23.

[690] DI-060.

[691] DI-060, K-133.23.

[692] DI-060.

[693] DI-058, DI-060.

[694] DI-058, DI-060, K-133.23.

[695] ICRC/Customary IHL, rule 22.

[696] ICRC/Customary IHL, rule 97. The use of human shields is defined as using the presence (or movements) of civilians or other protected persons to render certain points or areas (or military forces) immune from military operations.

[697] DI-058, K-133.1, K-133.16. See also this chapter, section A.2: Unlawful killings.

[698] DI-058.

[699] See this chapter, section A.5: Arbitrary deprivation of liberty and enforced disappearance.

The Mission was also able to corroborate that, after the civilians escaped their detention on 8 December 2016, Tatmadaw soldiers intentionally burned several nearby villages.[700]

321. During the period of conflict, the Tatmadaw launched airstrikes on and fired into Monekoe and nearby villages, destroying civilian property as well as a church, and in at least one instance causing civilian deaths.[701] One victim reported that in early November 2016, while fighting the MNDAA, the Tatmadaw fired artillery shells at her village, one of which hit her house. Two other villagers were killed in the shelling and children injured.[702] After the artillery attack, the Tatmadaw entered the village, took the food rations and livestock. Her family fled to China and later returned but soldiers prohibited them from returning to their village. She told the Mission, "losing my home means we are in a dire economic condition. The attack has traumatised me and my children and changed our lives forever."[703]

322. The fighting displaced an estimated 20,000 people, forcing many of them close to the border or into China.[704] The area was under a state of lockdown that prevented humanitarian assistance from reaching some displaced in need;[705] and credible reports indicate a local aid worker was injured attempting to reach the displaced population.[706]

323. The Tatmadaw regained control of Monekoe town in early December 2016. Displaced individuals who returned to the town and area were photographed and issued with a white-coloured card.[707] These cards had to be shown at all times, including when going to cut firewood or to farmland.[708] Credible reports received by the Mission describe that soldiers would frequently check houses to confirm the number of people present and keep family photographs in front of houses to allow for surprise checks.[709] Individuals returning to Monekoe were in need of food and shelter assistance as houses had been burned, but access was limited to those holding these white cards, preventing humanitarian agencies from providing assistance.[710]

B. Patterns of violations and abuses committed by non-State armed actors

324. The denial of access to the country and the refusal of the Myanmar authorities to respond to the Mission's requests for information have greatly limited the ability of the Mission to gather first-hand information on violations and abuses perpetrated by EAOs. Consequently, the Mission had to draw more from secondary sources, with the methodological challenges this entails. The sample of cases reported and verified by the Mission may not be fully representative of the overall, highly complex situation. Nevertheless, the Mission has a reliable, but limited body of information suggesting that most EAOs[711] fighting in Kachin and Shan States, to differing extents, have committed international humanitarian law violations and human rights abuses.

325. The information received by the Mission suggests that violations and abuses committed by EAOs occur on a lesser scale than those committed by the Tatmadaw.

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[700] DI-058, K-133.4, K-133.6, K-133.15, K-133.22, K-133.23.

[701] K-133.9, K-133.10, K-133.11, K-133.13, K-133.14, K-133.17, PI-042, SM-001, V-056.

[702] The Mission does not have sufficient information to ascertain whether these attacks were directed at a legitimate target and/or adequate precautions were taken.

[703] PI-042.

[704] K-142.40.

[705] K-069.4, K-069.5.

[706] K-069.5.

[707] K-142.41, QI-082.

[708] DI-058, V-056.

[709] K-.133.6, K-142.48, PI-041.

[710] K-142.48, QI-082.

[711] These include TNLA, KIA, SSA-S, MNDAA, and AA. In some instances the Mission was not able to identify which Shan State Army (SSA) committed the violations, either the SSA-S or the SSA-N. The Mission received extremely limited information pertaining to the United Wa State Army (UWSA).

1. Legal framework

326. International humanitarian law applies to all parties to an armed conflict, whether international or non-international, including non-State armed groups. Additionally, the Mission considers that non-State actors who hold effective control over territory and exercise government-like functions are obliged to respect human rights norms when their conduct affects the human rights of persons under their control.[712]

327. Specifically with regard to the issue of recruitment, international law does not entitle non-State armed actors, regardless of whether they are a de facto authority over a particular part of the territory, to recruit on a compulsory or forced basis (either adults or children). Even if the rights of a non-State actor in control of territory to conscript the population into the armed forces were the same as that of a State, restrictions would still apply. It would still not be allowed to impose it in a manner that would render the recruitment unlawful or arbitrary.[713] As for States, the (voluntary) recruitment of children into a non-State armed group is prohibited.[714] This includes the recruitment of children in any capacity, including as fighters, cooks, porters, messengers, or spies.[715] While the age limit is not set in customary international law, it is agreed that it at least applies to any child under 15 years.[716] It is also a human rights violation when the State fails to take all feasible measures to protect children under the age of 18 against recruitment by armed groups, whether forced or voluntary.

2. Findings

(a) Failure to take feasible precautions in attack

328. According to the principle of precautions in attack, parties to the conflicts in northern Myanmar must take constant care to spare the civilian population, civilians and civilian objects. Information received by the Mission suggests that EAOs have in several instances failed to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. Some EAOs have also often failed to take into account humanitarian considerations when launching attacks, causing large numbers of civilians to flee.

329. For example, it was reported that in May 2018, the TNLA attacked government security posts in Muse Township, Shan State. According to this information, 18 people were killed in addition to a police captain. The Mission was unable to verify details of this incident, including whether the persons killed were civilians and how they had been killed. However, the TNLA reportedly stated that the "casualties were armed militia members and their families".[717]

330. Fighting between two EAOs, the TNLA and the SSA-S, has led to massive displacement in northern Shan State. For example, it was reported that 300 civilians fled Mong Hway village, Mongton Township, Shan State in mid-March 2018, following clashes between the two armed groups. It was further reported that civilians were trapped in the cross-fire and had to be evacuated by aid workers.[718] Later in March 2018, it was also stated that, during fighting between the TNLA and SSA-South in Taw Phe village, Kyaukme Township, Shan State, a shell allegedly exploded in the village killing two civilians and injuring others. As a result of the fighting, approximately 1,000 civilians fled the area.[719]

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[712] See chapter II, section C: Legal framework.

[713] See this chapter, section A.6: Forced labour and forced recruitment of adults and children.

[714] ICRC/Customary IHL, rule 136. See also CRC, art. 38.

[715] See UN Children's Fund (UNICEF), The Paris Principles. Principles and Guidelines on Children Associated With Armed Forces or Armed Groups, February 2007, p. 7.

[716] Under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, which Myanmar signed but has not yet ratified, armed groups should not, under any circumstances, recruit persons under the age of 18 years.

[717] V-203, V-204.

[718] V-205, V-300.

[719] V-301.

Earlier in July 2016, fighting between the two armed groups caused 350 civilians to flee another village called Man Lwe in Kyaukme Township, Shan State.[720]

331. In November 2016, the Northern Alliance, composed of the KIA, the TNLA, the MNDAA, and the AA, launched an offensive attack against police and military outposts and a business centre in Muse and Kutkai Townships in northern Shan State. Reports estimate that at least eight people were killed and 29 wounded. Bullets also crossed the Ruili River into Chinese territory, and wounded a Chinese national. About 3,000 residents fled to China to escape the fighting and more than 2,700 others were reported to have been internally displaced.[721]

332. In early March 2017, the Mission received credible but unverified reports that at least 30 persons were killed when the MNDAA launched an attack against police and military posts in the Kokang Self-Administered Zone. Thousands fled across the border into China. A separate group of fighters later attacked locations in Laukkai. Official Government statements, accompanied by graphic pictures of the dead and wounded, informed that at least five civilians and five local police officers were killed in the fighting. It also said that a further 20 "burned bodies" had been found alongside weapons reportedly of MNDAA fighters.[722]

(b) Recruitment into armed groups and forced labour

333. The Mission amassed a reliable body of information drawing a pattern of some of the EAOs forcing adults and children to join their armed ranks.[723] While some EAOs may not have an official policy of forced recruitment – or policies that have been reformed or changed during the reporting period – the situation on the ground demonstrates that persons are often recruited against their will. Victims and witnesses have also told the Mission that even if there is no policy of forced recruitment *per se*, there is no space to object to joining the ranks of certain armed groups. This could be due to a general perception that ethnic minorities in the North need to fight the Tatmadaw and defend their people. Furthermore, there are few alternatives available to villagers, with the drugs trade and gambling businesses the principle other employers.

334. Victims of forced recruitment that have shared their accounts with the Mission were forcibly recruited in areas controlled by the EAOs,[724] but also in government-controlled areas.[725] In the latter cases, EAOs would recruit at night or through letters.[726] Because of the limited information obtained, the Mission was unable to draw the specific geographical locations of this recruitment. However, information suggests that it occurred in both Kachin and Shan States and throughout the reporting period.

335. Sources mentioned to the Mission that the SSA-S had a compulsory recruitment policy,[727] especially during the early years of the reporting period. While the SSA-S had a policy of one person from each household joining their ranks, one source stated that this was enforced in a compulsory manner,[728] while another source stated that it was voluntary.[729] A further interviewee stated that, "you don't really have a choice to go fight along the SSA-S".[730]

336. Similarly, the Mission noted a comparable practice among the TNLA, but also with conflicting information as to the extent to which the practice was "compulsory". According

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[720] K-143.

[721] K-143.

[722] V-302, V-303.

[723] DI-070, PI-033, PI-015, PI-050, PI-095, PI-096, PI-072, PI-097, PI-101, PI-112, QI-081, QI-088, QI-092, QI-093, QI-094, QI-096.

[724] PI-015, PI-095, PI-096, PI-101, QI-088.

[725] PI-027, PI-033, QI-081, QI-094, QI-096.

[726] QI-081, QI-094, QI-096.

[727] PI-050, QI-093.

[728] QI-093.

[729] BM-017.

[730] PI-050.

to some sources, while it was obligatory for families who had two siblings, especially two sons,[731] exceptions to this requirement were sometimes permitted in special circumstances,[732] for example when a person had to take care of his elderly parents. One source provided the following information on the recruitment process:

> *If there are two brothers then one must join the TNLA. The "person in charge" from the TNLA would inform the village administrator about who should join. At the beginning of 2011, the TNLA started to collect the names of people who should join the TNLA. The understanding was that the next time they came back he would need to join. The TNLA would collect names once every two years.*[733]

337. Other sources stated that the policy was stricter, and each household had to provide one person to serve and join the TNLA, with no opportunity to object.[734] For example, one woman mentioned that the TNLA recruited her 26-year old son by force in 2016, in Namhsan Township, Shan State. The village administrator, under the orders of the TNLA, selected her son for recruitment. He has not returned to his home, more than two years later:

> *My son did not want to join the TNLA to fight. He hid for years in a monastery to avoid forced recruitment but when he returned to the village to visit us, he was caught. Since my son was recruited, I have not heard from him. I always check Facebook to see if I will recognise him in a post, either dead or alive.*[735]

338. Another victim of forced recruitment shared with the Mission that he was forced to participate in the TNLA military training, but managed to escape during a religious festival. He fled because he wanted to take care of his mother. But he said that he was not able to return home to his village, because the TNLA would catch him, and he therefore went to Yangon and eventually fled the country.[736]

339. According to one witness, the MNDAA also required one member of each household, normally young men, to join their ranks. The witness mentioned that he was one of two brothers and he had to hide from the MNDAA because he did not want to be recruited. He eventually fled the country because he feared both the MNDAA recruitment and the Tatmadaw.[737] Another witness mentioned that he fled the Kokang Self-Administered Zone because he feared being recruited by the MNDAA. He said, "I was afraid to be recruited by the Kokang Army [MNDAA] so I decided to flee to Lashio. I wanted to go back home to Kokang but I was told that the MNDAA would be looking for me."[738]

340. Accounts received indicate that the KIA may also have maintained a "voluntary" recruitment policy which in practice amounted to forced recruitment. The KIA sent letters to many households, including to those in IDP camps, requesting a member of each family to voluntarily join the KIA.[739] However, according to one source, many civilians understood recruitment to be obligatory.[740] One interviewee stated that, "After receiving the letter from the KIA, my father decided that my eldest sister would join".[741] Another source mentioned that, "The KIA sent us a letter asking us to join voluntarily. They came very often and asked us to join but I had no interest in becoming a soldier. I have too many

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[731] PI-015, PI-095, PI-096, PI-101.

[732] PI-101, QI-088.

[733] QI-088.

[734] PI-072, PI-096, PI-112.

[735] PI-097.

[736] QI-088.

[737] QI-092.

[738] PI-015.

[739] PI-033, QI-094, QI-096.

[740] QI-081.

[741] QI-096.

family responsibilities and I do not like shooting guns."[742] Another source gave information that indicated the manner in which the "voluntary" policy was enforced:

> *The KIA recruited soldiers from my town. If we did not go voluntarily, we would be arrested and forced to go. When the war started again in 2011, the KIA told former soldiers that they must come back to fight. My younger brother was forced to join the KIA in 2012 – he was 20-years old.*[743]

341. The Mission received multiple accounts of women and men escaping military training.[744] For example, one victim recounted that he escaped TNLA training in September 2011 in Namhsan, Shan State, because he wanted to look after his mother.[745]

342. The Mission also recorded accounts of discrimination among EAOs. Many have affirmed that the KIA forcibly recruited from other ethnic minorities in Kachin State, such as the Lisu, Shan or Ruwang, rather than the Jinghpaw.[746] Others have said that Ta'ang members fighting for the RCSS or KIA were not treated equally.[747] A Ta'ang community leader mentioned that six Ta'ang young adults were forcibly recruited to join a KIA military training in Muse Township, Shan State, in January 2016.[748] In one account received, the RCSS forced Ta'ang villagers that had enrolled with the TNLA to join their ranks instead. The RCSS beat villagers asking, "why did your son join the other group?"[749]

343. Women were also recruited by EAOs and often had to perform more tasks than men.[750] A source mentioned that, "not many women were recruited in my village. Usually women have to go through the same training as the men, in addition, however, they have to also clean member's clothes and uniforms and cook for them."[751]

344. The Mission further has reasons to believe that some EAOs have forced civilians to work for them and that such work was not voluntary. The Mission received accounts of the KIA and the SSA-S using civilians to dig trenches or to work as porters.[752] One source mentioned that, from 2011 to 2013, the SSA-S would often require civilians to work for them, and that this would increase as fighting with the Tatmadaw intensified. He said: "The SSA-S used villagers for portering and when the villager did not want to go they would beat them".[753] Similarly, the Mission was told by one interviewee that to his knowledge and in the period before he fled in 2013, the MNDAA would sometimes require villagers to carry their arms and other heavy materials in Laukkaing Township, Kokang Self-Administered Zone.[754]

345. A victim shared how he was used for forced labour by the KIA in Mansi Township, Kachin State, in 2012:

> *I was used by the KIA to dig a trench. The KIA came and took our names and other details, and we were told to go and work. I worked for 2-3 weeks for the KIA, building a large bunker and a military trench for the soldiers. The KIA did not treat us badly – they had shower facilities, we were given meals. I wanted to sell vegetables in the logging area controlled by the KIA and we needed support from the KIA – as a result, when we were asked to work, we had to. We did not get paid for this.*[755]

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[742] QI-094.

[743] QI-081.

[744] DI-070, K-143, PI-027, PI-100, QI-088.

[745] QI-088.

[746] K-143, PI-001, PI-027, PI-033.

[747] K-143, PI-101.

[748] K-143.

[749] QI-088.

[750] PI-045, PI-094, PI-101.

[751] PI-094.

[752] QI-081, QI-093.

[753] QI-093.

[754] QI-092.

[755] QI-081.

(c) Forced recruitment of children

346. The Mission amassed a reliable body of information demonstrating a pattern of EAOs recruiting children into their armed forces, in violation of international law.[756] The Mission was able to collect information on child recruitment conducted by the TNLA, KIA, RCSS and UWSA. Many of the Mission's victims and witnesses clearly stated that their recruitment and involvement with the armed groups was against their will.

347. The United Nations has verified cases of the UWSA using children in their armed ranks in 2012, 2013 and 2014.[757]

348. Sources informed the Mission that the TNLA recruits boys that are no longer in school, from the age of 14 to 15 years old.[758] The TNLA has a policy of recruiting boys and girls from the age of 16 years old.[759] One interviewee explained that the village administrator kept a list of all the boys who are no longer in school and that the TNLA would go through the list to recruit them. He stated that, prior to 2013, the TNLA would only take one boy per household, but that this practice has changed, and as they now take all brothers from a household, and even some girls: "they do not have the option of saying no to the TNLA".[760] Further accounts suggest that young men and boys often run away from the TNLA after being recruited, or to avoid recruitment.[761] Another source mentioned that his brother was forcibly recruited by the TNLA after he fled his village to escape recruitment. His brother was 16 years old when he started his military training.[762]

349. Women and girls usually are recruited by the TNLA for administrative work and do not engage directly in fighting.[763] Girls are usually asked to cook for the TNLA and are not necessarily required to fight.[764] This still constitutes prohibited recruitment.

350. The KIA has also recruited boys and girls under 18-years old.[765] Although one source mentioned that this practice was in place mostly before 2010,[766] the Mission received information to suggest its continuation. It was also reported that the KIA abducted children to force them to join their ranks. For example, on 12 March 2014, two girls aged 15 and 16 years old, were abducted by two KIA elements in Mansi Township, Kachin State. After four days in captivity, they were required to join the KIA in military support roles.[767] In another verified incident, the KIA abducted four girls in Lashio Township, Shan State, on 26 November 2015. The girls were subsequently moved to different posts and reportedly received military training.[768]

351. The Mission received accounts of children being recruited in the ranks of the SSA-S,[769] with accounts of children fleeing to avoid compulsory military training by the SSA-S. The children interviewed mentioned that they were afraid of being caught by the armed group after their escape.[770]

352. A woman shared an account of forced recruitment conducted by the SSA-S in her village of Mong Khung Township, Shan State, when she was 16 years old in August 2011. The SSA-S arrived in her village and recruited villagers who had not fled the fighting between the SSA-S and the Tatmadaw. The SSA-S recruited 58 villagers in total including

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[756] DI-070, K-061, K-064, K-143, PI-001, PI-014, PI-093, PI-095, PI-101.

[757] K-061.

[758] PI-093, PI-101.

[759] PI-101.

[760] PI-093.

[761] PI-093.

[762] PI-095.

[763] PI-101.

[764] PI-093.

[765] K-061, K-064.

[766] PI-001.

[767] K-061.

[768] K-064.

[769] DI-070, K-061, PI-014.

[770] DI-070, PI-014.

children and 15 women. She was one of them, and had been forced to undertake military training for nine months until she escaped. She said:

> *I was part of the SSA-S training. I was forced to go there. Three SSA-S armed men came and said "you need to be part of our group". The SSA-S went to each house. If I had not accepted to go, my father would have been forced to join, but he was already old. My father objected to me joining the SSA-S military training but they answered "if you don't want her to come, we will come back and get you".*

353. The victim also stated that the conditions during training were dire and they often felt hungry: "We had to train hard and to always be on guard for the Tatmadaw. Sometimes we had to work the entire night without eating. It was quite hard for the women in the group.[771]

354. Another 16-year old girl told the Mission that she was forcibly recruited by the SSA-S in July 2011 in Mongkaung Township, Shan State until she escaped from a SSA-S military camp. She received training for two years, which she said was because, "they needed to work for their country and fight back the Tatmadaw".[772]

(d) Destruction and appropriation of civilian property

355. The Mission has reasonable grounds to conclude that EAOs have confiscated and destroyed civilian property as a means to coerce civilians to participate in military operations, to gain control over a given territory or to punish civilians who have collaborated with the Tatmadaw or an opposing non-State armed group.[773] This appropriation of property was closely connected to the extraction of natural resources or farming, which appear to be imperative to the armed group's financial survival.[774]

356. For example, a source reported that the SSA-S destroyed his mother's tea plantation in 2013 in Namhsan Township, Shan State. The source mentioned that the SSA-S wanted to gain control over the Ta'ang region and exploit the tea plantation for financial reasons. This led his mother and other villagers to leave and move to Yangon as they were no longer able to earn a living in their native village.[775] The Mission also recorded other recent unverified accounts of Ta'ang villagers being forced to leave their land in territory controlled by the SSA-S in Shan State.[776]

357. In several cases reported, the TNLA confiscated the land, house or belongings of families who refuse to give up their sons for recruitment or because they escaped after having been recruited.[777] The property is confiscated until the families allow their son to be recruited. In one credible instance reported, the TNLA confiscated the home of the mother of the source in 2017, Namhsan Township, Shan State, because her brother was recruited by the TNLA, but had then "deserted" and fled to Thailand. As a consequence, the mother was evicted from her home, under orders from the TNLA.[778]

358. In another account, the TNLA confiscated the home and tea plantation of a family in Namhsan Township, Shan State in early September 2017.[779] The interviewee explained that initially her brother was recruited, despite his mental disability, and when he had escaped military training, she had been forcibly recruited in his place. She was informed of this by the village administrator, acting on behalf of the TNLA. She eventually also managed to flee, but as a consequence her parents were evicted from their home and land, and are now displaced.[780]

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[771] DI-070.

[772] PI-014.

[773] PI-094, PI-101, QI-088, SI-003.

[774] QI-088, SI-003.

[775] QI-088.

[776] PI-101.

[777] PI-093, PI-094, PI-095, PI-097.

[778] PI-093.

[779] PI-094.

[780] PI-094.

359. The Mission has also received unverified reports of the SSA-S and TNLA looting and pillaging civilian property during their military incursions into the opposing group's territory.[781] For example, on 13 February 2016, it was reported that, during fighting between the TNLA and RCSS in Nam Twe village, Langhko Township, Shan State, SSA-S members entered the village and looted the belongings of villagers.[782] Similarly, on 7 January 2016, in Tangyan Township, Shan State, TNLA men entered a village and requested villagers to give them rice and allegedly said "we do not care if you have rice to eat yourselves".[783]

(e) Taxes and extortion (socio-economic component)

360. Some EAOs implemented arbitrary "taxation" requirements that caused significant economic pressure on civilians. For example, residents of villages under the control of the TNLA in Namhsan Township, Shan State, were obliged to pay "taxes" often referred to by villagers as "extortion money".[784] Sources informed the Mission that villagers were forced to pay up to 10,000 Kyat and one or two bags of rice per month, which represented a major burden for villagers who only earn wages during the short tea leave picking season, from March to late April. The village administrator kept a list of villagers who did not comply with the obligation to pay the taxes. When one household could not pay the TNLA, someone else in the village had to cover for them, and they then needed to pay double the next month.[785] One source mentioned that the TNLA maintained a list of villagers who have not paid "their dues" and that this may result in the TNLA visiting a person's house "with their guns to shoot at you or destroy your belongings."[786] In already difficult economic circumstances, this had a serious impact on villagers. One interviewee mentioned that villagers felt intimidated by this and would share small portions of rice amongst themselves to ensure that they had sufficient to pay the TNLA.[787]

361. Another source mentioned that, when the "Shan Army"[788] controlled the tea fields around his village in Namhsan Township, Shan State in 2011, they would require villagers to pay them a tax to be able to cultivate the land. Reportedly, they charged 30,000 Kyat per tea plantation. The Mission also received reports of the Shan Army[789] destroying tea plantations in 2013 in Namhsam Township, Shan State, as a mean to coerce villagers to pay them.[790]

(f) Abductions, arbitrary deprivation of liberty, torture and ill-treatment

362. The Mission has reasonable grounds to conclude that some EAOs have abducted, arbitrarily deprived persons of their liberty, and subsequently ill-treated or tortured, as a mean to coerce them to participate in military operations, to gain control over a given territory, or to punish civilians who have collaborated with the Tatmadaw or an opposing EAO.[791]

363. The Mission received credible accounts of the TNLA abducting the parents of children who refused to join their ranks.[792] In one case reported to the Mission, the TNLA abducted the mother of a boy who refused to join the TNLA.[793]

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[781] K-137, K-144.

[782] K-137.

[783] K-144.

[784] PI-093, PI-094, PI-096, PI-097.

[785] PI-093, PI-097.

[786] PI-097.

[787] PI-097.

[788] Unclear if Shan State Army-S (RCSS) or Shan State Army-N (SSPP). Considering the location of the incident, it is likely to be the SSA-N (SSPP).

[789] Ibid.

[790] QI-088

[791] K-143, PI-095, PI-112, PI-114.

[792] PI-093, PI-097, PI-112.

[793] PI-093.

364. The TNLA also arrested and detained civilians.[794] For example, a victim shared an account of arbitrary detention and ill-treatment conducted by the TNLA in Namhsan, Shan State, in March 2013. The victim was taken for forced labour by the Tatmadaw for four days, but managed to escape and returned to his village which was under the control of the TNLA. Upon his arrival at the entrance to the village, the TNLA detained and beat him accusing him of being a spy for the Tatmadaw. The victim stated, "I was beaten and tied-up for one entire night at the entrance of the village at the area where villagers keep their cows. I was beaten until I could not walk anymore". Members of the TNLA told the victim, "You betrayed the Ta'ang people by guiding Tatmadaw soldiers".[795]

365. In another reported case, the TNLA arrested the father of a 29-year old man who was absent when the TNLA arrived to recruit him in October 2017 in Namkham Township, Shan State. The father was subsequently arrested and detained by the TNLA until the man returned and was recruited. He said, "The TNLA often do this. They arrest parents in order to force the sons to join the TNLA. They release the parents only when the sons are recruited".[796]

366. The KIA also abducted civilians to coerce them in participating in military operations.[797] For example, in a verified incident that occurred in February 2017, a 12-year old girl was abducted by the KIA in Kutkai Township, Shan State, and held hostage by the group because her older brothers had refused to be recruited. During her captivity, the girl received military training.[798]

367. The Mission also received unverified reports of SSA-S and TNLA abducting civilians in the course of their military incursions against each other.[799] The Mission was not able to determine if the civilians were released following the abductions. For example, it was reported that SSA-S abducted 11 Ta'ang villagers from a village in Kyautme Township, Shan State, on 17 January 2016.[800] Further, on 17 September 2017, it was reported that the SSA-S abducted a monk and his brother in Thibaw Township, Shan State. They were allegedly released 10 days after their abduction.[801]

368. The Mission verified an incident involving the SSA-S arbitrarily depriving the president and secretary of a local branch of the Ta'ang National Party of his liberty on 20 June 2015 in Mongkaung Township, Shan State.[802] The victim had erected a billboard for the Ta'ang National Party in his village and had refused to take it down at the request of the SSA-S. As a result, SSA-S armed men detained the victim with another member of the party under a tree for two days. They were beaten on the head and body with rifle butts. Their hands and legs were tied for approximately 24 hours. The victim was beaten by an SSA-S leader who told him, "if you do not become an SSA-S soldier then you can die here". The SSA-S leader also pointed a gun at his temple and pulled the trigger in a mock execution. Two days later, the victims were moved to the forest and placed under a plastic covering with no walls, and remained detained there for 33 days. The victim was handcuffed, making sleeping difficult. Civil society organizations intervened and eventually secured the victims' release. The SSA-S initially denied having the detainees in their custody but they eventually confirmed their location and released the victims on the condition that they do not participate in any political party or recruitment for the SSA-S. Members of the armed group also threatened to confiscate and destroy the property of the victims should they be politically active in the future.[803]

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[794] K-143, K-144, PI-095.

[795] PI-095.

[796] PI-112.

[797] K-061, K-064.

[798] K-061.

[799] K-137, K-144.

[800] K-137.

[801] K-137.

[802] K-137, PI-114, V-304.

[803] PI-114.

369. Another 16-year old girl told the Mission that she was forcibly recruited by the SSA-S in July 2011 in Mongkaung Township, Shan State. The child was ill-treated and wanted to return home to care for her sick mother, she said:

> *I was beaten with a stick sometimes. The trainees were often punished by the SSA-S members. If the soldiers did not hit us hard enough, an officer would come and hit us harder. We were punished for serious offences such as wanting to leave the training. The conditions in which we lived at the training camp were very hard. Once a month a senior officer would come and ask if we had something to say about the training. I was always beaten because I wanted to go home and because I was the youngest.*[804]

(g) Sexual and gender-based violence

370. One incident of sexual violence concerning perpetrators belonging to an EAO was reported by a source and involved the rape of a headmistress by several TNLA officers at her home in Kyaukme Township, Shan State in October 2017. Following the victim's report to local authorities, the TNLA negotiated for the perpetrators to pay compensation to the victim, and brought two soldiers to kneel and apologize to her. The TNLA held a "court case" in the forest to address the crime. The victim was invited, but chose not to attend.[805] The Mission also received unverified reports of KIA men raping women in Kachin State during the reporting period who were subsequently tried before courts in KIO controlled territory.[806] These allegations require further verification.

(h) Killings

371. The Mission has also obtained credible but unverified information suggesting that some EAOs have unlawfully killed civilians or fighters *hors de combat* in their custody.[807]

372. For example, the Mission recorded an account of the Shan Army[808] killing a Lahu man in 2011 in Maungdaw Township, Shan State. According to the witness, the victim, a former Tatmadaw soldier, was mutilated and tortured before being killed.[809] In February 2016, it was reported that an unspecified ethnic armed group killed seven civilians in Kyaukme Township, Shan State. The bodies were found by the Tatmadaw the day after their abduction.[810] In March 2016, the UWSA reportedly executed two persons after they were convicted of murder by the Wa Special Administrative Zone's court.[811] A further reported case suggests that SSA-S men killed a Ta'ang villager in Namkham Township, Shan State, on 1 July 2016.[812] Similarly, it was reported that TNLA men killed four villagers in the forest near a village of Namkham Township, Shan State, on 8 February 2016.[813]

373. These cases require further verification, including regarding the protected status of the persons killed.

C. Impact of conflict, violations and abuses on civilians

1. Fear, trauma, displacement and humanitarian impact

374. Irreversible harm has been inflicted on civilians by all parties to the conflicts in northern Myanmar: civilians were killed and injured; families were separated and displaced

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[804] PI-014.

[805] PI-110.

[806] K-145.

[807] K-143, QI-077.

[808] Unclear if Shan State Army-S (RCSS) or Shan State Army-N (SSPP).

[809] QI-077.

[810] K-143.

[811] K-143, V-305.

[812] K-137.

[813] K-144.

multiple times; homes, churches and schools were looted or destroyed, also preventing many children from attending school regularly;[814] and entire villages were burned and destroyed. The civilian population continues to live in constant fear and terror of an army that has thoroughly failed to protect them, and in many instances directly attacked them.

375. Victims have informed the Mission of how their lives have been altered as a consequence of the perpetration of human rights violations. Victims remain highly traumatised.[815] For example, a source mentioned that children are afraid of opening doors and hide when they see or hear planes.[816] Other victims are no longer able to work to sustain a livelihood.[817] For instance, a tea plantation farmer explained that she can no longer work on her plantation after she was injured from shrapnel and bullet wounds on her leg and arm during a Tatmadaw attack in northern Shan State on 2 May 2017. She remained hospitalised for several weeks and she can hardly move. Her husband has since become a monk and her only income is from the work undertaken by her children. Their house was also destroyed during the attack and they now live in a rented home.[818] A torture victim shared that since an incident in northern Shan State in August 2017, and because of injuries inflicted by Tatmadaw soldiers, he can no longer work and sustain his family: "The Tatmadaw soldiers tortured me and destroyed my life".[819] Other torture and ill-treatment victims have stated that they suffer from severe trauma, cognitive dysfunction, and other mental and physical consequences that require medical care.[820]

376. Many victims reported that it had been extremely challenging to obtain medical services to treat their injuries, and some have felt compelled to travel to China to seek medical attention.[821] Victims have also reportedly died because of the lack of timely medical care.[822] For example, a victim from the Monekoe area in Shan State reported that on 15 January 2016 a mortar shell exploded in her compound, close to a main road, causing injuries to herself and her daughter:

> *The shell pieces are still in our bodies. My daughter is not normal now. She doesn't respond to me sometimes. When I was in the hospital, doctors didn't take the shell pieces out of my body because it was too risky. Doctors said it might harm the baby as I was already 8 months pregnant then. I had to have a surgery to deliver my baby because my whole body was swollen.*[823]

377. Victims and witnesses' accounts indicate the Tatmadaw frequently went to the villages of individuals who had escaped detention or forced labour looking for them,[824] and in some cases beat family members of the escaped individual.[825] For example, one victim from Myitkyina, Kachin State, who was arrested and detained overnight in 2012 and whose brother was killed by the Tatmadaw during this detention, reported that after he escaped detention and fled the country, the Tatmadaw went to his village to look for him. His parents and siblings were afraid to stay in the village so they fled to an IDP camp.[826]Another victim from Myitkyina, Kachin State reported how, as retaliation for her escape after several months of forced labour in 2012, her house was destroyed and her mother beaten, and made to undertake forced labour for the Tatmadaw.[827]

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[814] PI-087, DI-067, PI-016.

[815] PI-042, PI-103.

[816] PI-103.

[817] PI-042, PI-046, PI-072.

[818] PI-073.

[819] PI-035.

[820] PI-021, PI-035, PI-115.

[821] PI-029, PI-055, PI-065, DI-057.

[822] DI-070, PI-105.

[823] PI-115.

[824] PI-066, PI-067, PI-077, PI-078.

[825] PI-007, PI-068.

[826] PI-062.

[827] PI-068.

378. An estimated 97,000 people in Kachin and 9,000 people in Shan remain in displacement camps or camp-like situations, many in overcrowded conditions with inadequate shelters, which are in urgent need of repair and provide little privacy. Many of them have been displaced for extended periods of up to seven years. Displaced peoples, particularly in non-government controlled areas, have told the Mission that the quality of education afforded in camps is poor and not recognized by the authorities to attain higher education.[828] Meeting food needs is, in the words of one local organization working in these camps "a constant struggle", with limited food rations and a rate of chronic malnutrition well above the national average.[829] Access to health care remains limited, and psycho-social support is largely non-existent. Insecurity levels in camps are high and many displaced persons have a sense of despair for the future.[830] Thousands of others, approximately 68,000 since 2017 alone, have suffered from temporary displacements over the reporting period. Some of these individuals have been displaced multiple times.

379. Many families have been separated because of the war and many do not have contact with family members left behind.[831] For example, a woman explained that she was separated from her child while fleeing a Tatmadaw attack on her village in November 2017 in Kachin State and had not seen her since.[832]

380. Victims frequently told the Mission that after being released or escaping from detention they were too afraid to return to their villages,[833] in particular if the Tatmadaw had taken their identification documents.[834] Many victims decided to leave the country,[835] and in some cases family members also had to leave.[836] Leaving Myanmar also impacted victims that fled and family members left behind. A man said that his aunt had to mortgage her land to pay for his trip to Malaysia, after he had escaped arbitrary detention by the Tatmadaw.[837]

381. Civilians continually suffer as a consequence of the continuing conflicts between the Tatmadaw and the EAOs.[838] Many express a feeling of being caught in the middle: for example, one witness mentioned that, "villagers want nothing to do with this, all they want is to live in peace and farm their land. Instead we are caught in between so many wars."[839] Another stated that, "it is very difficult to live in the KIA controlled area. It is also very hard to live under the Tatmadaw controlled areas. Why can't we live in peace?"[840]

(a) Consequences on women

382. The consequences for women, especially for those who lost their spouse or fathers as a result of attacks, killings or whose husbands were forcibly disappeared, are particularly severe.[841] Many face a dire economic situation having lost the main breadwinner of the family, and are vulnerable to other violations, including sexual and gender-based violence. The mother of a victim killed by the Tatmadaw in June 2017 in Namhsan Township, Shan State, stated the following:

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[828] PI-087, QM-014.

[829] PI-056.

[830] QM-014, QM-017.

[831] PI-020, PI-027, PI-074, PI-084, PI-086.

[832] PI-086.

[833] PI-089, PI-085, PI-084, PI-079, PI-078.

[834] *PI-011, PI-029.*

[835] PI-062, PI-033, PI-029, PI-006.

[836] PI-001, PI-008, PI-012, PI-027, PI-062, PI-096, QI-089.

[837] PI-079.

[838] PI-044, PI-074, PI-095, PI-094, PI-097, QI-077, QI-079, QI-080, QI-087.

[839] PI-094.

[840] PI-044.

[841] PI-070, PI-073, PI-074.

> *Before my son died, we relied on him to pay for medicine and food as we are aged. Now without him it is very difficult to survive, and our life is very hard now. I live with my husband, but he is also old. There is no one else to care for us anymore.*[842]

383. Another woman recalled the impact of the disappearance of her husband in Kachin State in 2014:

> *I became the head of the household. My children lost their father, and I had to find income to maintain my children and my aging parents. I had to start selling vegetables and to travel from one village to another. That is where Tatmadaw soldiers raped me in February 2018. Ever since my husband was taken away by the Tatmadaw, we have been struggling for survival. I decided to leave my children in Kachin State with my elderly parents so I can work abroad and ensure they stay alive.*[843]

384. The impact of sexual and gender-based violence on women and men reported to the Mission is severe, varied and long-lasting. The Mission found one case of rape that resulted in death caused by contracting HIV.[844] Other injuries reported by women included experiencing pain in the vagina and lower abdomen region during sexual intercourse.[845] Similarly, men who experienced sexual torture in detention continue to suffer enduring physical and psychological injuries, including bleeding from the anus, loss of cognitive function, loss of emotional control, loss of erectile function and inability to work.[846]

385. The lack of specific medical expertise related to rape exacerbates the effects of sexual violence in the region. As victims are predominantly women, this creates gender-based inequality in access to medical services. In several cases, women did not have the access to medical attention and women have fallen pregnant, sometimes even after seeing a doctor immediately after the rape, because they were not given medication to prevent pregnancy.[847] A 2017 report by the United Nations Special Rapporteur on the situation of human rights in Myanmar had also found that the limited capacity of providers, as well as restrictions on women's freedom of movement due to increased militarization, limited access to life-saving services for survivors of sexual and gender-based violence.[848]

2. Landmines

386. There is no systematic nationwide collection of casualty data related to landmines, but across Myanmar at least 1,000 people have been killed or injured by anti-personnel landmines since August 2011 across 14 states and regions.[849] Of the recorded incidents in recent years, Kachin and Shan States have among the highest number of landmine casualties, and numbers are increasing.[850] For example, from 2016 to April 2018, the United Nations recorded 199 casualties in Kachin State including 42 deaths, and 182 casualties in Shan State, including 48 deaths.[851] Despite the signing of the Nationwide Ceasefire Agreement in October 2015, which committed all parties to end the use of landmines and cooperate on mine-clearance operations, new landmines continue to be laid.[852]

387. Several victims and witnesses reported instances where civilians were injured or killed due to landmines.[853] Individuals informed encountering landmines in forest areas,

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[842] PI-074.

[843] PI-069; see this chapter, section A.4: Sexual and gender-based violence.

[844] PI-007.

[845] PI-063, PI-068.

[846] PI-052, PI-055, PI-056.

[847] PI-066, PI-067, PI-068, PI-069, QI-098.

[848] A/HRC/34/67, para. 56.

[849] Myanmar Information Management Unit, *Townships with Known Landmine Contamination (2017) and Casualties in Myanmar* (December 2016).

[850] Ibid. K-064, V-306, V-307.

[851] K-064.

[852] V-308.

[853] PI-103, PI-104, PI-094, PI-085, PI-046, PI-045, DI-061, PI-076.

either while detained by the Tatmadaw or while fleeing fighting,[854] while travelling to their tea plantations or farm,[855] and in or around villages.[856] The Mission was unable to verify the party responsible for laying the mines in these cases, but credible reports indicate that both the Tatmadaw and EAOs have laid landmines.[857] Credible reports indicate that Tatmadaw soldiers lay landmines in villages they have attacked or after civilians have fled, or on roads frequently used by civilians.[858] Civilians have also laid landmines in order to protect their property.[859]

388. The presence of landmines has a severe impact on the lives of civilians. Displaced persons have indicated that landmines were one of the concerns preventing them from returning to their places of origin.[860] For example, one individual from Namhsan Township, Shan State, explained the impact of landmines:

> *There are many landmines planted on the route to my tea farm. There is no way to see them, you only know they are there after stepping on them. Villagers often die from stepping on them. My friend stepped on one and lost her leg. My father nearly stepped on one but he was lucky, it exploded just before he put his foot on it. The landmines make it dangerous for us to farm.*[861]

3. Lack of recourse

389. Not only do victims and survivors live in a continuing state of insecurity and a constant fear, they also have also no recourse to justice. The very authorities that should protect them also fail at this level. The climate of impunity and its underlying causes it discussed in detail in Chapter VII (impunity and accountability). This section provides a brief overview of the experiences of victims and witnesses from Kachin and Shan States in this regard.

390. Many victims are too afraid to complain. If complaints are made, the default reaction appears to be of reprisal and attempts to silence rather than undertaking a genuine investigation. In cases that have been investigated, the process has often been flawed.

(a) No possibility to file complaints

391. Individuals who escaped after having been detained and in many cases subjected to torture, ill-treatment, sexual violence or attempted murder by the Tatmadaw, frequently told the Mission that they were too afraid to return to their villages, let alone to file official complaints.[862] This concern was particularly apparent in cases where the Tatmadaw had retained the individual's identity document.[863] This fear was not unfounded as many were later told by family members that the Tatmadaw had come and looked for them after they had escaped.[864] In some cases, the Tatmadaw had also threatened or beaten family members of those who had fled.[865] For example, one victim from Puta-O Township, Kachin State, reported that after being sexually assaulted by a soldier in 2012 she did not return home but the soldier went looking for her there:

> *I was walking back from another village when a soldier pulled me into the jungle. He put his hand over my mouth to stop me from screaming, he beat me and touched*

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[854] PI-016, PI-104, PI-085, PI-046, PI-045. See also this chapter, section A.6: Forced labour.

[855] PI-016, PI-094.

[856] DI-061, QI-094, PI-046, PI-098.

[857] K-137, K-144, PI-045, PI-049, PI-094, PI-098, SI-003, V-309.

[858] PI-045, PI-049, PI-094, PI-098, SI-002, SI-003.

[859] PI-085; G. Cathcart, "Landmines as a form of community protection in Eastern Myanmar", in *Conflict in Myanmar: War, Politics, Religion*, 2nd ed., N. Cheesman, N. Farrelly, eds. (ISEAS, 2016), pp. 127-131.

[860] PI-103, SI-002, SI-003.

[861] PI-094.

[862] PI-078, PI-079, PI-084, PI-085, PI-089.

[863] PI-006, PI-007, PI-011, PI-029, PI-040.

[864] PI-066, PI-067, PI-077, PI-078.

[865] PI-007, PI-068, PI-096.

> *my body. An elderly man passing by heard the commotion and told the soldier to leave me alone. I ran away but was too afraid to go back home so I stayed with an elder in my village. The next day the elder went to see my parents, they said the soldier had been to my house [illegible] for me. He had beaten my parents and taken my ID card from them. Because [illegible] I had to leave my village.*[866]

392. Many victims therefore decided to leave the country following their escape from detention.[867]

393. Individuals who did return to their villages, as well as family members of individuals who had been killed or who had witnessed killings, told the Mission that they did not complain as they were afraid to do so.[868] This fear is not unfounded given that reprisals have been carried out against some individuals who have complained,[869] and given that many victims or their family members are located in rural and insecure areas often in continued close proximity to perpetrators. Some victims or witnesses indicated that they did not know how to file complaints or there was no one to complain to.[870] Others said they felt there was no point in complaining.[871] For example, one individual from Loilen Township, Shan State, whose father was killed told the Mission that he did not file a complaint as "the government does not care about us and the Tatmadaw is abusive. There is no point in filing a complaint – there is no justice."[872] In some cases a combination of reasons are given. One individual from Kutkai Township in Shan State whose son was killed by the Tatmadaw in March 2017 said "I did not complain. I do not have any money and I didn't know how. I was also afraid."[873] Another told the Mission that she was not aware that forced labour was a violation until she left the country.[874]

394. Several individuals told the Mission that they had not shared their story with anyone else.[875] For example, a village administrator from Muse Township, Shan State, whose village was attacked by the Tatmadaw in one incident and villagers killed in another, stated:

> *After the attack happened in 2016, I didn't share the story with anyone. Nobody else in the village shared the story either. We didn't receive threats from the Tatmadaw but we just understood the situation. When the members of my village were killed in 2017, I felt sad, but nobody lodged any complaints then either. We are afraid. As village administrator, I had gone to ask compensation in the past but was told "go and ask compensation from the rebel groups, not from us.*[876]

(b) Reprisals for speaking out

395. Where individuals did dare to speak out about violations committed in Kachin and Shan States, the Mission was provided with numerous examples of the police or Tatmadaw bringing, or threatening to bring,[877] court cases against them under a range of problematic legal provisions.[878] In a number of other cases brought to the attention of the Mission,[879] the Tatmadaw's response to alleged violations, has been to assert, often without any investigations, that the individuals were either killed by EAOs, or were fighters of these organizations and therefore legitimately killed. Based on such assertions, the Tatmadaw brings cases for defamation of the image of the Tatmadaw, or under the Unlawful

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[866] PI-007.

[867] PI-006, PI-029, PI-033, PI-062.

[868] DI-057, DI-068, PI-041, PI-070.

[869] DI-062, PI-070, QI-090.

[870] Ibid.

[871] PI-041, PI-082.

[872] PI-082.

[873] PI-070.

[874] PI-058.

[875] DI-057, DI-058, DI-062, DI-063, PI-117.

[876] DI-057.

[877] A/HRC/37/70; K-139, PI-037, PI-038, PI-102, PI-106, V-206.

[878] See chapter VI, section A.2: Intimidation and reprisal for engagement with the United Nations.

[879] K-139, PI-037, PI-106.

Associations Act, against individuals alleging Tatmadaw responsibility for the deaths. This is particularly problematic given that the Mission has found a pattern of individuals being killed while in Tatmadaw custody and given information indicating that the Tatmadaw portrays or disguises civilians that were killed as members of EAOs, such as by making them wear the uniforms of EAOs.[880]

396. A well-known example is the case of Brang Shawng, who was convicted of making "false charges," under section 211 of the Penal Code on 13 February 2015 and sentenced to a 50,000 Kyat fine or six months in prison. He alleged his daughter had been shot and killed by the Tatmadaw on 13 September 2012 in Sut Ngai Yang village, Hpakant Township, Kachin State and wrote a letter to the Myanmar National Human Rights Commission calling for an investigation.[881] Another individual from Kachin State, told the Mission that after her father was killed after having been seen in the custody of the Tatmadaw, in 2018, charges were brought against a relative that complained:

> *My relative went to the police, she tried to complain and to make a police report – she explained that the Tatmadaw were responsible and she wanted to get justice. The Tatmadaw said that my father was a member of the KIA, and that my relative was lying. They brought charges against her. She was afraid so she had to leave her home.*[882]

397. Charges have also been brought against journalists or those interacting with them.[883] For example, police brought charges against Dumdaw Nawng Lat, President of the Kachin Baptist Church in Monekoe, Shan State and his nephew and assistant pastor Langjaw Gam Seng, after they guided journalists around their damaged church which they alleged had been bombed by the Tatmadaw in November 2016. Both were sentenced to two years and three months in prison on 27 October 2017 under section 17(1) of the Unlawful Associations Act, with Dumdaw Nawng Lat receiving an additional two year sentence for defamation under section 505(b) of the Penal Code, after also giving an interview to an international news outlet.[884]

398. Lawyers who have taken up sensitive cases against the Tatmadaw in Kachin and Shan States have also faced threats, leading some to be afraid of working on these cases.[885] For example, one lawyer told the Mission that he was harassed and his colleagues threatened when working on a case against the Tatmadaw:

> *It was a sensitive case, so I was watched by the intelligence. Every time I went to the place of the incident, I was harassed by police. My co-workers were threatened by the military. They said, "If you take the case, you will have problems."*[886]

399. Civil society organizations working in Kachin and Shan States face constant surveillance and visits from the security forces, and face additional security concerns when releasing reports that implicate the Tatmadaw.[887]

(c) Flawed process when complaints are taken up

400. In a few cases, individuals reported to the Mission that they were given compensation by the Tatmadaw but without any form of process.[888] For example, a father whose son was shot by the Tatmadaw when he was walking along a road in Kutkai

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[880] See this chapter, section A.2: Unlawful killings.

[881] A/HRC/28/72, PI-105, V-208.

[882] PI-106.

[883] A/HRC/37/70; A/72/382; V-209; see also OHCHR, *The Invisible Boundary – Criminal prosecutions of journalism in Myanmar* (11 September 2018).

[884] Ibid. PI-037, PI-038, V-057. See this chapter, section A.5: Arbitrary deprivation of liberty and enforced disappearance.

[885] PI-037, BM-008; International Commission of Jurists, *Achieving Justice for Gross Human Rights Violations in Myanmar Baseline Study*, (Geneva, 2018).

[886] BM-008.

[887] BM-007; A/HRC/34/67.

[888] PI-071, PI-074, PI-110.

Township, Shan State in August 2017, was told by the Tatmadaw that they had made a mistake and was given 500,000 Kyat for the funeral.[889] The amount of compensation given appears to be arbitrary - a mother whose son was killed by the Tatmadaw in Namhsan Township, Shan State, in 2017 reported:

> *A soldier from the Tatmadaw base gave my village administrator money to pay for the funeral but the funeral was more expensive so I had to take out a loan. I spoke to the Tatmadaw, but was very intimidated. I explained to them that my son was the bread winner in my family and without him we could not survive. I asked for more compensation but they never gave us anything else.*[890]

401. The Mission was also told of a recent case of rape in 2018 in Shan State where, following a meeting between local authorities, a Tatmadaw commander and relatives of the victim, the soldier responsible was slapped 10 times and compensation of 200,000 Kyat provided to a male family member of the victim.[891]

402. Due to the lack of cooperation from the Government of Myanmar, the Mission did not have access to official information on prosecutions against members of the Tatmadaw for violations. However, the Mission is aware that in a small number of cases, members of the Tatmadaw have been prosecuted for violations including killings and sexual violence. For example, in relation to the killing of three IDPs in Mansi Township, Kachin State in May 2017, a military tribunal sentenced six Tatmadaw soldiers to 10 years' imprisonment in January 2018.[892] The Mission is also aware of a case of a child who was raped in Kachin State where a soldier was sentenced to 10 years in prison with hard labour.[893] However, investigations and prosecutions appear to be limited to a small number of often high-profile cases. The default approach is to deny Tatmadaw responsibility, dismiss the complainant, and in some cases threatening prosecution against anyone alleging Tatmadaw involvement in the incident, and only when these approaches fail to deflect attention, to undertake some form of investigation which generally does not comply with international investigative standards.[894]

403. For example, the Tatmadaw has threatened legal action in relation to the killings of the volunteer teachers named Maran Lu Ra and Tangbau Hkawn Nan Tsin in Shan State on 19 January 2015, and there were serious concerns about the investigation methods.[895] A similar pattern can be seen in incidents of arrest, for example in the case of Dumdaw Nawng Lat and Langjaw Gam Seng in Monekoe, Muse Township, Shan State, where the Presidential spokesperson denied on 10 January 2017 they were held by the Tatmadaw, but it later transpired that they had in fact been detained in a military base from 24 December 2016.[896] Credible information received on the killing of seven individuals in Mong Yaw, Shan State in June 2016 indicates that following an incident where witnesses saw two individuals being shot by the Tatmadaw after they ignored an order to stop at a checkpoint, and five other individuals being detained near their farm land and not returning, the military ordered villagers not to leave their village for three days.[897] When villagers were able to go back to their farms, the bodies of the seven individuals were found in two sites. On 2 July 2016, the Myawaddy military-owned newspaper, stated that "rumours on social media that Tatmadaw had killed seven civilians, which were not true," continuing that two of the individuals were TNLA members and the other five bodies had been found by troops during "area clearance."[898] However, later a Tatmadaw senior general reportedly admitted

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[889] PI-071.

[890] PI-074.

[891] PI-110.

[892] A/HRC/37/70, para. 36.

[893] PI-037.

[894] See chapter X: Impunity and accountability.

[895] See this chapter, section A.4: Sexual and gender-based violence.

[896] See this chapter, section A.5: Arbitrary deprivation of liberty and enforced disappearance.

[897] K-076.21.

[898] Article on file with the Mission.

publically that five villagers were killed by the Tatmadaw during an interrogation,[899] and in September 2016, seven soldiers were reportedly sentenced to five years in prison with hard labour for the killings.[900] It does not appear further investigations have been conducted into the two individuals allegedly killed at the checkpoint.

404. The Mission also received credible information indicating that even when cases are brought before authorities, the process is often flawed. For example, a lawyer who has taken up several cases against the Tatmadaw identified a number of issues related to the functioning of courts in their experience:

> *When cases are tried by a military court, the charges are often not what is expected because the military code is different. For example, in a case of sexual violence, there is no such charge, so a perpetrator was sentenced instead for intoxication during official duty and got a lighter sentence. Sometimes lawyers are allowed to go to military hearings but mostly we are not, we just get informed of the outcome, we never get a written copy, we are just told orally. We also never know whether or not the rulings are implemented. Even cases before civilian courts have problems. Like with the military courts, we are not given a copy of the judgments. Sometimes if we request them we get them but it takes a long time. For sensitive cases we are generally not allowed to see them – we are told they are lost or in Naypyidaw.*[901]

V. Emblematic situation 2: Rakhine State

405. Rakhine State is located in western Myanmar. It extends some 560 km along the Bay of Bengal and shares a border with Bangladesh. It is geographically remote – much of its internal borders with other states of Myanmar are mountainous and infrastructure links to the rest of the country are limited. Despite its strategic location and fertility, the state remains one of Myanmar's poorest, with an estimated 44 per cent of the population living below the poverty line.[902] All communities in the state are affected by scarcity of livelihood opportunities[903] and it scores poorly on many social development indicators.[904]

406. The state comprises various ethnic and religious groups. The majority of the population is ethnic Rakhine and Buddhist.[905] Muslims constitute the second largest religious group, the majority of whom are Rohingya,[906] with a smaller proportion of Kaman. There are also a number of other minorities such as Chin, Daingnet, Khami, Maramagyi, Mro, Thet and Hindus. The distribution of ethnic and religious minorities in

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[899] W. Lone, "In rare move, Myanmar military admits soldiers killed five villagers" (Reuters, 20 July 2016).

[900] Frontier Myanmar, "Tatmadaw soldiers jailed for killing Mong Yaw villagers" (16 September 2016).

[901] BM-007.

[902] UNDP, Poverty Profile, Integrated Household Living Conditions Survey in Myanmar - 2009-2010 (2011). Rakhine State continues to rank low compared to other states and regions in Myanmar on many indicators of living standards. See UNDP, Myanmar Living Conditions Survey 2017 (June 2018).

[903] Center for Diversity and National Harmony, *Rakhine Needs Assessment II* (January 2017).

[904] UNICEF, *Rakhine State – A Snapshot of Child Wellbeing*, available at: https://www.unicef.org/myanmar/Rakhine_State_Profile_30-07-15.pdf

[905] It is not possible to provide exact percentages as Rohingya were not included in the 2014 census and, in any case, the 2014 census data on ethnicity has not been released. 63 per cent of the population in Rakhine State was of Buddhist faith when adjusted for the non-enumerated population, principally the Rohingya. This figure includes some other smaller Buddhist groups in addition to the ethnic Rakhine. See also: Center for Diversity and National Harmony, *Rakhine Needs Assessment* (October 2015). The report estimated the population of ethnic Rakhine at 60 per cent in Rakhine State.

[906] On 29 March 2014, a day before the census was due to begin, the Government reneged on an earlier explicit commitment to allow the Rohingya to self-identify their ethnicity on census forms. The presidential spokesperson stated that those wishing to state their ethnicity as Rohingya would not be registered. As a consequence, most of the Rohingya were not enumerated in the census. The census estimates the non-enumerated population at 1,090,000 which would constitute 34 per cent of the total population in Rakhine State.

the state varies by region, with Rohingya constituting a large majority in the northern district of Maungdaw, and ethnic Rakhine in most remaining districts. Estimates of Rohingya remaining in Rakhine State after the mass exodus to Bangladesh of 2016 and 2017 vary between 200,000 and 240,000 in the northern townships and 332,000 and 360,000 for central Rakhine State.[907]

407. The ethnic Rakhine, like many other ethnic minorities in the country, have grievances against the central Government, which they perceive to have favoured Bamar-Buddhists politically and economically. They are proud of ethnic Rakhine culture, language and history, which they feel is threatened. There is also a strong sentiment that the development of Rakhine State has been neglected. In the words of one ethnic Rakhine who spoke to the Mission, "in Rakhine State, there are a lot of resources but we can't get these resources from our own State".[908] This sentiment is fuelled by the high poverty levels. According to data from the 2014 census, Rakhine State has the highest unemployment rate in the country, and the lowest access to clean water and sanitation.[909] There are also concerns that some large-scale development projects, such as the Shwe Gas pipeline, and initial preparatory phases for the Kyaukpyu Special Economic Zone are not benefitting local communities.[910]

408. In late 2015, an ethnic Rakhine armed group, the Arakan Army, started operating in Rakhine State.[911] Its stated aims include self-determination for ethnic Rakhine (Arakanese) people, safeguarding cultural heritage and promoting the "national dignity and Arakanese national interest".[912] It has operated in a number of townships within Rakhine State and has since sporadically clashed with the Tatmadaw, with clashes reportedly becoming more frequent and more deadly in recent years.[913] The casualties incurred by the Tatmadaw in these clashes exceed those resulting from the ARSA attacks of 2016 and 2017. The clashes have also caused displacement of civilians.

409. In September 2016, in an effort to address the concerns of all communities in the State, the Myanmar Government formed the Advisory Commission on Rakhine State. The Commission, composed of six national and three international members, was chaired by former United Nations Secretary-General, Kofi Annan. It was mandated to "finding lasting solutions to the complex and delicate issues in Rakhine State, in accordance with established international standards". The Commission produced a final report in August 2017, including 88 wide ranging recommendations.[914] The Office of the State Counsellor welcomed "recommendations for meaningful and long-term solutions". It stated that it would give the report "full consideration with a view to carrying out the recommendations to the fullest extent, and within the shortest timeframe possible, in line with the situation on the ground."[915] The report noted that the situation in Rakhine State amounted to a

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[907] K-113.7.

[908] DM-003.

[909] Data from 2014 census data available on an interactive platform: http://www.dopredatam.gov.mm/redbin/RpWebEngine.exe/Portal?BASE=MMARENG&lang=eng

[910] CI-154, CI-162; International Commission of Jurists, *Special Economic Zones in Myanmar and the State Duty to Protect Human Rights* (February 2017); Earth Rights International, *There is no benefit, they destroyed our farmland* (June 2013).

[911] The Arakan Army was created in 2009 in Kachin State, predominantly by ethnic Rakhine migrant workers from the mines of Hpakant who received training by the Kachin Independence Army (KIA). The Arakan Army is part of the Northern Alliance and the Federal Political Negotiation and Consultative Committee (see chapter IV: Emblematic situation 1: Kachin and Shan States) and has participated in hostilities in the north of Shan State, Kokang Self-administered zone and Kachin State.

[912] Myanmar Peace Monitor, *The Arakan Army*.

[913] According to credible reports, the townships where the Arakan Army operates include Buthidaung, Kyauktaw, Maungdaw, Mrauk-U, Minbya, Ponnagyun, and Rathedaung. See: K-076.23; D. Mathieson, "Shadowy rebels extend Myanmar's wars (Asia Times, 11 June 2017); A. Davis, "Myanmar's other Rakhine problem (Asia Times, 29 November 2017).

[914] Advisory Commission on Rakhine State, Final Report, *Towards a peaceful, fair and prosperous future for the people of Rakhine* (August 2017).

[915] Republic of the Union of Myanmar, Office of the State Counsellor, *Statement by the Office of the State Counsellor on the Final Report of the Advisory Commission on Rakhine State* (24 August 2017).

"development crisis", a "human rights crisis", and a "security crisis". It underscored that the mandate of the Advisory Commission was not to examine specific allegations of human rights violations.[916]

410. The Mission has examined such specific allegations. It has focused on (1) human rights violations against the ethnic Rakhine, (2) the systemic oppression of the Rohingya, (3) the violence in 2012, and (4) the extreme violence in 2016 and 2017 in the context of the ARSA attacks and security forces' "clearance operations".

A. Human rights violations against the ethnic Rakhine

I want to share my story with the whole world because the world does not know what is happening in our land.[917]

411. The international community has focused much attention on the human rights situation of the Rohingya. Human rights violations against ethnic Rakhine have largely gone unnoticed. The Mission purposefully reached out to ethnic Rakhine communities, finding consistent patterns of serious human rights violations against them. In most cases, Tatmadaw soldiers were the perpetrators.

1. Forced or compulsory labour[918]

412. The Mission found a consistent pattern of the Tatmadaw using ethnic Rakhine men, women and children for forced or compulsory labour.[919] Forced labour took place throughout the reporting period and across Rakhine State.[920] The victims were mostly from remote rural areas. Considering that victims also referred to family members, including their parents,[921] being subjected to similar practices in the past, it is clear that such practices have been a feature of Rakhine rural life for many years.

413. The ethnic Rakhine have experienced multiple forms of forced or compulsory labour. The most common form was the carrying of heavy packs, weapons and supplies for Tatmadaw patrols, referred to as "portering", with the victims usually being males. Both men and women have also been forced to work in Tatmadaw compounds, with men usually constructing infrastructure and women washing, cleaning and cooking. Other forced labour related to road construction, breaking and carrying rocks, cutting firewood, clearing forests, and working in paddy fields.

414. Victims told the Mission of the typical experience. Tatmadaw soldiers would arrive in a village or where villagers were gathered, including fields while farming[922] or when returning from work,[923] and order villagers to join them without warning or consultation. Soldiers would often physically grab people as they passed through the village,[924] or take them from their homes.[925] In such instances, the selected villagers were often unable to inform their families. They were given no information on the work they were supposed to do and had to embark immediately on portering or other forms of work for days or weeks. One victim described his experience:

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[916] Advisory Commission on Rakhine State, Final Report, *Towards a peaceful, fair and prosperous future for the people of Rakhine* (August 2017), pp. 9-10 and p. 13.

[917] DI-028.

[918] For legal framework, see chapter IV, section A.7: Forced labour and forced recruitment of adults and children.

[919] CI-053, CI-055, CI-056, CI-057, CI-058, CI-060, CI-153, CI-154, CI-158, CI-159, DI-014, DI-015, DI-016, DI-017, DI-018, DI-019, DI-028, DI-029, DI-032, DI-033, DI-036, DI-039, DI-041, DI-043, DI-044, DI-045, QI-072, QI-074, QI-075.

[920] The Mission documented cases in the following townships in Rakhine State: Buthidaung, Kyaukpyu, Kyauktaw, Mrauk-U, Maungdaw, Minbya, Pauktaw, Ponnagoyun, Ramree, Rathedaung and Sittwe.

[921] DI-017, DI-029, QI-075.

[922] CI-055, DI-019.

[923] QI-074.

[924] CI-053, CI-058, CI-060, CI-153, CI-154, CI-158, DI-018, DI-028, DI-043.

[925] CI-056, DI-015, DI-017, DI-032, DI-036, DI-041, DI-044, DI-045.

> *I used to go to the forest and collect firewood to sell. One day, I was on my way back with other villagers. Suddenly, some Tatmadaw soldiers appeared and grabbed us. They beat us and said that we had to go with them for portering. We had to go with them straight away. We were then portering in the high hills for eight days.*[926]

415. Alternatively, the Tatmadaw would gather labourers by telling the head of the village to provide a number of persons.[927] One victim, who lived in a village next to a Tatmadaw base, reported that announcements were made indicating the number required on a particular day.[928]

416. Most victims had to participate in forced or compulsory labour on multiple occasions. For some, it was once a week, for others it could be once a month, or two to three times a year.[929] It appears that proximity to a Tatmadaw base may have affected the frequency. While there was little scope to avoid forced or compulsory labour, there are instances where villagers paid the Tatmadaw as an alternative.[930] In some situations, one person from each household in the village had to go for forced labour, whenever the order came. Victims of forced labour were often required to report on a regular basis. They frequently had to sleep in the Tatmadaw camp until the tasks were completed and they were permitted to return home. Victims were fearful of further forced labour. When the Tatmadaw arrived in the village, the youth would often flee to hide. No payment or compensation was received for the labour.[931]

417. The duration of forced or compulsory labour has varied, lasting from a few hours to days, weeks or months.[932] Porters could be forced to travel significant distances on foot, carrying heavy loads between towns or to other states, for up to ten days.[933] One villager described how he had to carry a grenade launcher for eight days.[934] In most cases, the porters were not given any information about the journey, simply ordered to follow the troops.

418. Forced labour was also imposed in the context of the conflict between the Tatmadaw and the Arakan Army,[935] exposing porters to significant dangers. In some instances, porters were taken to conflict areas and exposed to combat or the risk of combat.[936] One victim described how another porter was badly injured by an anti-personnel mine and had his leg amputated and bandaged without medicine.[937] Porters were also used as minesweepers, with soldiers sending porters ahead of them.[938] One victim stated:

> *I was taken as a porter when working in a field. A large group of soldiers came and told me to follow them. When I refused, they kicked me and punched me in the face. A soldier pointed his gun in my back and said I would be killed if I did not follow. So, I followed and carried their rations. They made me and others walk at the front, carrying heavy bags. We travelled for three days and then there was shooting between the Arakan Army and the soldiers. The fighting lasted about one hour. I managed to hide in the forest, but three soldiers and other porters were killed.*[939]

419. Forced labourers received overt verbal threats, including death threats to themselves or family members, insults and derogatory references to their ethnicity. Ethnic Rakhine

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[926] QI-074.

[927] CI-056, CI-057, QI-074.

[928] QI-072.

[929] CI-056, DI-015, DI-016, DI-032, DI-033, DI-036, QI-072, QI-074, QI-075.

[930] QI-075.

[931] CI-057, CI-154, CI-158, DI-015, DI-041, QI-072, QI-075.

[932] DI-039, DI-045, QI-075.

[933] CI-055, DI-017, DI-019, DI-039, DI-043, QI-074.

[934] QI-074.

[935] The Mission is aware of allegations of abuses committed by the Arakan Army, as well as allegations of violations perpetrated by the Tatmadaw in this context, both of which warrant further investigation. CI-159, DI-019, DI-043, QI-074, QI-075.

[936] DI-019.

[937] QI-074.

[938] DI-019, DI-043.

[939] DI-019.

who tried to avoid forced labour, because of sickness or other compelling reasons, were subjected to beatings with sticks,[940] or kicking and punching.[941] Additionally, fines were imposed and they faced the threat of arrest.[942] Forced labourers were frequently subjected to ill-treatment. Porters often had to walk long distances over many hours, carrying heavy loads and with little or no rest. They were only allowed to stop when instructed. When porters slowed down or were unable to carry the heavy loads, they were beaten with sticks or guns,[943] slapped or kicked.[944] One victim stated:

> *I was subjected to forced labour since I was 20 years old. I had to break stones. It happened irregularly, but it could last for about one week and sometimes three weeks. About 50 male villagers were taken each time. If we worked slowly, we were beaten. After nearly 10 years, I tried to refuse but the soldiers threatened to arrest me. When I refused again I was beaten with wooden sticks. My eyebrow was broken; I was bleeding.*[945]

420. During patrols, porters were given minimal food and water, while the soldiers had two or three meals a day.[946] One victim said that he only received food three times over an eight-day period.[947] Porters were forced to sleep on the ground in the open air or forest, while soldiers had sleeping mats and blankets.[948] The experience of forced labour and the associated ill-treatment had negative health consequences, some serious.[949]

421. Women were particularly vulnerable while serving in Tatmadaw camps, as they were also subjected to rape[950] and other forms of sexual violence. Some women were kept in the camp after completion of their service, and then raped by the Tatmadaw, including at captain rank.[951]

422. Children were not spared.[952] Like adults, children were subjected to portering, including the ill-treatment that often accompanies it (beaten[953] or hit with a rock[954]). One victim explained he still had the scars of injuries inflicted during the beatings while he was a child.[955] Another explained how she had been taken from the age of 13.[956] Tatmadaw soldiers would visit her village frequently, forcing one person from each household into forced labour. They would often take her father, but have also taken her mother or one of the four children. When they came, soldiers would just point at whomever they wanted. The witness recalled that she was taken to a Tatmadaw camp a three-hour walk away, where she was forced to break and carry stones. Sometimes she was taken for one week, sometimes for one month. At night, she slept in the forest. If she and other victims got tired, or tried to rest, the soldiers would abuse them verbally, threaten or beat them. She was beaten on five occasions.

423. Some of the victims tried to escape. Despite the fact that porters were guarded by troops,[957] some managed to flee.[958] Attempts to escape were dangerous, with porters being shot at:[959]

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[940] DI-018, DI-032, DI-043, QI-072, QI-075.
[941] CI-053, DI-017, DI-019, DI-045.
[942] DI-032.
[943] CI-056, CI-062, CI-153, CI-154, DI-017, DI-032, DI-043.
[944] CI-053, CI-056, CI-062.
[945] DI-032.
[946] DI-019, DI-032, QI-074.
[947] DI-019, QI-074.
[948] DI-032, QI-075.
[949] DI-017, QI-075.
[950] DI-014, DI-016, DI-017, DI-036, DI-041, DI-044, QI-072, QI-073, QI-074, QI-075.
[951] QI-072.
[952] DI-015, DI-016, DI-017, DI-029, DI-042, QI-072, QI-075.
[953] DI-015, DI-017.
[954] DI-042.
[955] DI-015.
[956] DI-017.
[957] CI-153, DI-016, DI-028.
[958] CI-053, CI-153, QI-074.

> *I did not try to escape. We would be shot. One person from a different village tried to escape and he was shot. I saw this with my own eyes.*[960]

424. Those who managed to escape lived in fear of being caught.[961] Victims felt compelled to hide, leave their homes, and ultimately flee the country. Forced labour had a significant impact on victims' economic conditions.[962] The majority of the victims already lived in economically deprived rural areas, with most living on a subsistence basis. While undertaking forced labour, persons were unable to earn a living for themselves or their families. The economic consequences were also a reason given for leaving Myanmar.[963]

2. Forced evictions

(a) Legal framework

425. Forced eviction is a serious violation of human rights. It is the "permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection".[964] Forced evictions often directly or indirectly affect various human rights, including the right to life; freedom from cruel, inhuman and degrading treatment; the right to security of the person; the right to an adequate standard of living, including the right to adequate housing, food, water and sanitation; the right to non-interference with privacy, home and family; the right to work; the right to property and the peaceful enjoyment of possessions (including the right not to be arbitrarily deprived of property); and the right to an effective remedy. Such violations are often the consequence of the way evictions are decided (for example, without consultation, information, or recourse), planned (for example, without notification, relocation, or adequate compensation), carried out (for example, at night or in bad weather, under threats, violence or force), or of their result (for example, loss of livelihood, property papers or documentation). Minorities are particularly vulnerable to forced evictions, because of discrimination or because they constitute a socially excluded, destitute or marginalised part of society.[965]

426. Not all evictions are prohibited. Evictions based on arguments of public or national interest may be justifiable. However, to be justifiable under international law, they must be carried out only in the most exceptional circumstances and after all feasible alternatives have been explored in consultation with the affected community, and after due process protections are afforded.[966] Evictions may not be carried out in a discriminatory manner. Due process protections include genuine consultation, adequate and reasonable notice, as well as legal remedies. Importantly, adequate compensation needs to be provided in advance[967] and all necessary measures should be taken to minimise the impact.

427. Protection against forced eviction is not linked to property rights. Everyone has the right to be protected against forced evictions, regardless of the type of tenure (for example, ownership, rental, informal settlement). Security of tenure is the cornerstone of the right to adequate housing, which also applies to occupiers without documentation.[968]

428. Under the Constitution of Myanmar, the Union is the "ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in

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[959] CI-153, DI-028.

[960] DI-028.

[961] CI-057, CI-056, CI-153, DI-032, QI-072, QI-074, QI-75.

[962] DI-015, DI-030, DI-039, DI-055.

[963] DI-032.

[964] United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 7: The right to adequate housing (Art. 11.1): forced evictions*, 20 May 1997, E/1998/22.

[965] For general overview of forced evictions and human rights, see OHCHR and UN-Habitat, *Forced Evictions – Fact Sheet No. 25/Rev. 1* (New York and Geneva, United Nations, 2014).

[966] United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 7: The right to adequate housing (Art. 11.1): forced evictions*, 20 May 1997, E/1998/22.

[967] See United Nations Commission on Human Rights resolution 1993/77.

[968] Ibid.

the atmosphere" (section 37). The 1894 Land Acquisition Act provides the framework for land acquisition for public purposes. The Government can compulsorily acquire land for "public purposes" or for a company when notice is given and compensation is at market value.[969] Legal reform in 2012 introduced a system similar to a private property regime. The Farmland Law[970] regulates paddy land, and the Vacant, Fallow and Virgin Lands Management Law[971] regulates a range of lands including unused plots and abandoned lands. Regardless of these developments, key issues in Myanmar are still linked to large-scale tenure insecurity and poorly kept land ownership records.

(b) Findings

429. The Mission found a pattern of the Tatmadaw arbitrarily appropriating land from ethnic Rakhine villagers across Rakhine State, and forcibly evicting them.[972] Land was taken for various purposes, including construction of infrastructure and food production for soldiers.[973]

430. Land is frequently taken arbitrarily and immediately, not allowing the affected person or family to prepare or to plan an alternative. A small group of up to 10 soldiers would arrive on a plot, and put up a military flag or place a sign indicating that the land was taken.[974] Reports were received that soldiers place fences or bamboo poles around the land and destroy existing properties on the land, for example sheds.[975] There is little or no consultation with the affected individual or family.[976] Furthermore, land confiscation by the Tatmadaw could affect multiple individuals and families at the same time, such as groups of villagers with adjacent small land-holdings.[977] One victim stated:

> *On 8 February 2012, when I was having lunch at home, I learned that the military was taking my paddy field. I went back immediately. I saw six soldiers who had put up bamboo poles around my paddy field. I begged them not to take the land, pleading that it was the only thing I had and that we were dependent on it. They did not listen They arrested me and took me to the office of the village head. I saw many villagers there, their hands tied up with rope. I managed to flee when I went to the toilet. The same day the military took away the lands of three other families.*[978]

431. Furthermore, the affected persons generally received no compensation, and were not informed of how to make any claims.[979] There are instances where minimal compensation was offered, with the amount viewed as derisory compared to the actual value and the economic loss.[980] In other cases, promised compensation was never received.[981] One victim stated:

> *Four soldiers came while I was on my land, asking to show my land documentation. After showing all documents, one of them said: "The military wants to build infrastructures here. We take your land. If you don't agree, talk to our officer." I went to the office with my mother. We were offered 9,000 Kyat. The market value was 900,000 Kyat. When we refused, the officer said it was government land and*

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[969] 1984 Land Acquisition Act, arts. 4, 6, 23 and 38.

[970] Farmland Law (Pyidaungsu Hluttaw Law No. 11 of 2012).

[971] Vacant, Fallow and Virgin Lands Management Act (Pyidaungsu Hluttaw Law No.10 of 2012).

[972] CI-055, CI-056, CI-059, CI-060, CI-158, CI-162, DI-015, DI-016, DI-031, DI-033, QI-072, QI-073. The Mission documented 14 cases in Kyaukpyu, Kyauktaw, Mrauk-U, Maungdaw, Minbya, Rathedaung and Sittwe in Rakhine State.

[973] CI-055, CI-056, CI-158, QI-073.

[974] CI-055, QI-072, QI-073.

[975] CI-055, CI-059, QI-073.

[976] CI-055, CI-158.

[977] CI-056, CI-059, DI-016, QI-073.

[978] CI-059.

[979] CI-055, CI-158, CI-162, DI-016.

[980] CI-055, CI-158.

[981] CI-158.

> *that they would take it anyway. The next morning, the military came again and destroyed my tent near the land. They planted a military flag and left.*[982]

432. After being evicted, the affected persons no longer had access to their land and efforts to reclaim usage were routinely met with warnings, beatings and death threats.[983] Ethnic Rakhine who objected to the confiscation, or who attempted to file complaints or find legal recourse, were subjected to beatings or detention.[984] One interviewee explained how he was beaten when he sought recourse:

> *When I discovered that my land had been confiscated, I went to see the chief of the local military camp. When I complained the first time, I was told that they need the land for military buildings and for crop cultivation. When I went back, I was ill-treated. Two soldiers held me, one from each side, and a third kicked me. I was kicked on the head, my nose was bleeding and I became unconscious. My ribcage was also damaged. I was then detained at the camp for one day and two nights.*[985]

433. The economic consequences of the confiscations and forced evictions were often dire for the victims and their families. Often confiscation took away land that was the only source of livelihood, pushing them further into poverty.[986] Alternative means of employment and sources of income were often not available, or were considered to carry significant risks. The evictions also negatively impacted the family life of some victims, as they were forced to separate to earn a living, or to leave the country altogether.[987]

3. Confiscation of food and livestock

434. Confiscation by the Tatmadaw of livestock, food supplies or other possessions, either at security checkpoints or during patrols in villages, was a common experience for ethnic Rakhine. The Tatmadaw would routinely confiscate domestic animals,[988] food,[989] or a proportion of a yearly production of crops.[990]

435. Resistance by victims to confiscations could lead to mistreatment by the Tatmadaw, including beatings,[991] leaving some with injuries.[992] The failure to provide the Tatmadaw with supplies could subject victims to further violations, including forced labour.[993] As with other violations, the fear of arrest or other repercussions from the Tatmadaw compelled some victims to flee the country.[994] One interviewee stated:

> *My family and I had a vegetable farm and soldiers often came to ask for vegetables. If we did not comply, the soldiers just took them. Sometimes they asked us to give them money. I did not have enough vegetables to sell because a lot were stolen by the military. This went on for a long time. The soldiers also came regularly to our shops and never paid. They just picked whatever they wanted. We could not protest. If we protested, they would damage everything.*[995]

436. It appears that the confiscation of property in this manner was widespread and a common feature of ethnic Rakhine village life. The manner in which victims describe the practice suggests that it became normalised for villagers:

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[982] CI-055.
[983] DI-033, QI-072, QI-073.
[984] CI-059, CI-162, DI-016, DI-033, QI-073.
[985] QI-073.
[986] CI-060, CI-158, DI-015, DI-016, DI-033.
[987] DI-015, QI-073.
[988] CI-054, CI-057.
[989] DI-028, DI-031, DI-041, QI-073.
[990] DI-036.
[991] DI-031.
[992] DI-028.
[993] DI-036.
[994] DI-028.
[995] DI-041.

> *The soldiers would take whatever we had from us. This included our livestock and vegetables from the farm. They took things from us every day. This was actually normal for us, so I didn't think this was important to mention.*[996]

437. While apparently considered normal, the economic impact could be devastating. These confiscations removed a significant part of the earnings of poor villagers existing at a subsistence level, affecting the entire family. The practice, and associated mistreatment, also served to build mistrust and enmity among the ethnic Rakhine towards the Tatmadaw.[997] However, powerlessness to respond appeared endemic. Information received indicates that victims did not file any complaints in relation to these practices.[998] One interviewee said:

> *We never filed any complaint. The soldiers are outside the law. Complaining to the authorities is like complaining to the soldiers themselves.*[999]

4. Sexual and gender-based violence

438. Ethnic Rakhine women have been subjected to rape and other forms of sexual violence by Tatmadaw forces.[1000] This has primarily taken place in the context of forced labour and has occurred across Rakhine State. Rakhine women who have been raped by Tatmadaw soldiers face rejection by their families or communities and fear being subjected to further sexual violence. Incidents have occurred prior to and throughout the period examined by the Mission.

439. In many incidents, women and girls, who are forced by Tatmadaw soldiers to carry out cooking, cleaning or manual labour, were also subjected to rape or sexual assault. For example, an interviewee from Kyauktaw Township, who had been subjected to forced labour over a period of two decades, was beaten by soldiers and raped on several occasions by a Tatmadaw captain. When she refused to return, the interviewee's husband was threatened by the Tatmadaw. She fled Myanmar, fearing that soldiers would return and rape her again. She described the last occasion she was raped:

> *At the end of the day [working at the military camp] the "chief" told me to wait, together with about ten other women. He chose about four or five women, and we were taken away one by one. I initially refused to go, but two or three soldiers beat me. In the room I was raped by one soldier, while two others stood outside the closed door. He had three stars on his uniform.* [1001]

440. Another woman from Rathedaung Township described being sexually assaulted while undertaking forced labour:

> *As I was washing the clothes of the soldiers, one of them came from behind and grabbed my breasts. He took off my bra and kissed me on the cheek. He touched my breasts with his hands. He touched me and rested his head on my shoulder. I didn't resist because I was afraid he would kill me.* [1002]

441. Ethnic Rakhine men subjected to forced labour also reported witnessing rape by Tatmadaw soldiers against Rakhine women. One former porter reported witnessing the rape of a group of women by the roadside in Mrauk-U Township:

> *We were resting by the roadside and the military had brought a group of four or five women from villages on the way. While we were there, they raped the women. They first made the porters move away so that we couldn't see. But I could still hear the women crying and saying things like, "what are you doing, stop" and also heard*

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[996] DI-028.
[997] CI-053, CI-056, CI-154.
[998] DI-041.
[999] DI-041.
[1000] DI-014, DI-036, DI-041, DI-044, QI-072, QI-073, QI-075.
[1001] QI-072.
[1002] DI-044.

> *them being beaten. Afterwards, they sent the women back to their villages. I heard this each time I was taken portering.*[1003]

442. Rape and other forms of sexual violence against ethnic Rakhine have also coincided with instances of forced evictions and other forms of pecuniary exploitation (unlawful tax collection) by the Tatmadaw. One male interviewee from Kyaukpyu Township noted that the rape of young women had occurred in 2014 during land confiscation coordinated by military camp No. 543.[1004] A Rakhine woman reported that when she was 17-years old, she had been raped at gunpoint by a captain from the Tatmadaw South Western Command in Minbya Township. This happened after her family was unable to provide the Tatmadaw with part of their harvest of rice, framed as a "tax". The captain said she should marry him in exchange". When she refused, she was raped.[1005]

443. There are also reported instances of rape by Tatmadaw troops in other contexts. One interviewee described the rape of an adult female relative by a Tatmadaw soldier, while she was cutting firewood near the forest in Ponnagyun Township.[1006] In a more recent case, one interviewee from Buthidaung Township described the general attitude of Tatmadaw soldiers towards Rakhine villagers in the aftermath of the post-25 August 2017 violence in Rakhine State and the attempted rape she was subjected to:

> *After 25 August 2017, there was an explosion and a lot of commotion. Villagers initially relied on the Tatmadaw soldiers because they thought they would protect us. However, soldiers did not do anything to protect Rakhine villagers. Instead, they made the villagers cook for them and took some women. I said I didn't want to cook for them but they dragged me to a military base close to my house. When I arrived, I saw four other Rakhine women. There was a group of about a dozen soldiers. They grabbed our hands and touched us. They tried to take off my clothes and rape me. We were all screaming. They shut our mouths with their hands but some still managed to shout. We were about to get raped, but my uncle and others arrived and we were released. The soldiers didn't provide any security. Instead, they stole from us and grabbed us.*[1007]

5. Emblematic incident: shooting in Mrauk-U on 16 January 2018

444. The Mission received reports of repressive action against the assertion of ethnic Rakhine identity. An emblematic case is the use of excessive force in relation to a demonstration in the Rakhine city of Mrauk-U against the cancellation of an annual ethnic Rakhine event. The Mission interviewed eyewitnesses of the incident.[1008]

445. Mrauk-U was the last capital of the ancient Arakanese Kingdom, with a majority of the population of Rakhine ethnicity. An annual ceremony is held to mark the end of the rule of the Arakan dynasty following the conquest of the area by Bamar forces. After an initial postponement due to delays in obtaining permission from the authorities, the 233rd anniversary celebrations were scheduled for 16 January 2018. Ethnic Rakhine from across the state arrived in Mrauk-U. However, the authorities suddenly cancelled the evening events. The news spread among the crowd, which had gathered to attend the event. The crowd started to demonstrate against the decision. One witness recalled:

> *People had started to gather in Mrauk-U since the morning. We were in the city and ready for the celebration that night. However, we were unexpectedly informed that the celebration was cancelled. So, the gathering became a demonstration instead of a celebration.*[1009]

[1003] QI-075.
[1004] QI-073.
[1005] DI-036.
[1006] DI-014.
[1007] DI-041.
[1008] CI-161, DI-042, DI-043.
[1009] DI-042.

446. Event participants went to the main police station and then to the District Administration office, to know the reason for the cancellation. At the District Administration office, the security forces had closed the gate to prevent the crowd from entering. The demonstration continued outside, with a large crowd gathered. At 6.30 pm, it appears that a decision was made to cut the power supply to the streetlights in the area.[1010]

447. The police stationed inside the compound then fired a series of live rounds. It is reported that they first fired into the air. Local media also stated that protestors "launched stones with slingshots and threw bricks" at the security forces, and at one point tried to seize the weapons of two police officers.[1011] The Government subsequently claimed that the police fired about 20 warning shots with assault rifles and about 40 warning shots with bolt-action rifles.[1012]

448. According to the witnesses interviewed by the Mission, live fire was also directed at the crowd, hitting a number of demonstrators. The police also beat people with guns and sticks, and kicked people on the ground. The witnesses stated that it was difficult to know the direction of the shooting because of the darkness, and the chaos caused by people running in different directions in an attempt to escape. One witness stated:

> *I heard gunshots and then there was rapid shooting at the crowd coming from inside (the compound). I saw two people shot and they died instantly. Others were shot in the arms and thighs. The police were shooting at the crowd in the dark. They were also hitting people with guns and sticks, and stamping on people with boots.*[1013]

449. At least seven ethnic Rakhine demonstrators were shot and killed, and at least 12 were seriously injured. According to a statement issued by the Government, "With the rioting escalating, authorities said security forces fired 10 shots into the crowd with assault rifles and bolt-action rifles, killing seven people".[1014]

450. In the aftermath, the police started arresting people, particularly young people. A number of participants fled Myanmar fearing arrest. One witness stated:

> *Following the incident, the authorities started arresting people who participated in the demonstration and who were witness to the incident. I was targeted because I went to the hospital several times to see my injured friend. I could not meet my friend because there were police within the hospital compound blocking access. The police may have seen me in the hospital area.*[1015]

451. Under international human rights law, the State is under an obligation to facilitate protests. The use of force by law enforcement officials should be exceptional. Any use of force must comply with the principles of necessity and proportionality. The degree of force used should be limited to the minimum necessary in the circumstances, and should be targeted at individuals using violence or to avert an imminent threat. Specific rules apply to the use of firearms during assemblies. They may only be used against an imminent threat, either to protect life or to prevent life-threatening injuries. There must also be no other feasible option, such as capture or the use of non-lethal force. Firearms should never be used simply to disperse an assembly. Indiscriminate firing into a crowd is always unlawful.[1016]

452. It appears uncontested that the police used live fire to shoot into the crowd, in complete darkness, and that at least seven protesters were killed as a result. While the Mission notes that some protestors may have used violence (throwing of stones), there are

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[1010] Global New Light of Myanmar, "Seven killed, 12 injured in Mrauk-U riot" (18 January 2018).

[1011] Ibid.

[1012] Republic of the Union of Myanmar - Ministry of Information, "Seven killed, 12 injured in Mrauk-U riot" (17 January 2018).

[1013] DI-042.

[1014] Global New Light of Myanmar, "Seven killed, 12 injured in Mrauk-U riot" (18 January 2018).

[1015] CI-161.

[1016] A/HRC/31/66, paras. 57-60; A/HRC/26/36, para. 75; OHCHR and United Nations Office on Drugs and Crime, "Resource book on the use of force and firearms in law enforcement" (New York, United Nations, 2017).

no indications that there was an imminent threat to life or life-threatening injuries that warranted the use of lethal force, let alone the firing of assault rifles into the crowd during the night, after the streetlights were switched off. The Mission therefore has reasonable grounds to conclude that the police used excessive force in the management of this protest.

453. The broader context of this incident warrants further investigation. This includes an examination of whether the restrictions imposed on the celebrations were in compliance with international human rights law; whether the arrest and detention on charges under the Unlawful Association Act (section 17.1) of participants and two prominent ethnic Rakhine men (Wai Hin Aung, a Rakhine writer, and Dr. Aye Maung, the former head of the Arakan National Party and member of Parliament) is unlawful or arbitrary; and whether the overall handling of the events amounts to an undue and discriminatory restriction on the assertion of ethnic Rakhine identity

6. Conclusion

454. The serious human rights violations experienced by the ethnic Rakhine are similar to those experienced by other ethnic groups in Myanmar, mostly perpetrated by the Tatmadaw.

455. The forced and compulsory labour imposed by the Tatmadaw against the ethnic Rakhine is widespread, in violation of Myanmar's obligations under international labour law and international human rights law. The documented cases show that the work is exacted under the menace or use of physical force and (death) threats. Victims have no free choice and cannot but comply. The types of work consistently described to the Mission, and the circumstances of their imposition, cannot be construed as minor communal services that are permissible under international law. The Tatmadaw bully, force and coerce villagers into submission. This is further manifested in the numerous forced evictions and the total disrespect for villagers' property rights. Tatmadaw soldiers take anything they want, when they want. In doing so, they further push ethnic Rakhine villagers and their families into economic hardship and poverty. The level of arbitrariness and abuse of power on the part of the Tatmadaw is astounding.

456. Such conduct is a catalyst for numerous other human rights violations, including the arbitrary deprivation of life, arbitrary arrest and detention, sexual and gender-based violence, and other forms of severe ill-treatment.[1017] Such violations are often linked to attempts at escape, protest, or the inability to pay bribes.

457. The Mission is further concerned about additional information received, pointing at other violations, including of the rights to education, health, culture, freedom of expression, freedom of peaceful association and assembly, and freedom of religion. However, the information on these allegations is insufficient to make findings at this stage.

B. Systemic oppression and persecution of the Rohingya

> *In Rakhine State, Muslims are like in a cage, they cannot travel outside. There are no human rights for the Muslims of Rakhine. I don't know why God sent us there.*[1018]

458. The Rohingya are in a situation of severe, systemic and institutionalised oppression from birth to death. Their extreme vulnerability is a consequence of State policies and practices implemented over decades, steadily marginalising the Rohingya and eroding their enjoyment of human rights. The process of "othering" the Rohingya and their discriminatory treatment started long before the period covered by the Mission.

459. The cornerstone of this system of oppression is the lack of legal status of the Rohingya. This is compounded by restrictions affecting their movement, subsistence and development, and numerous other human rights violations. The life of Rohingya in Rakhine State has gradually become more and more untenable.

[1017] CI-057, CI-059, CI-061, CI-157, CI-162, DI-014, DI-029, QI-072, QI-073.

[1018] DI-007.

1. Denial of legal status and identity

460. The Myanmar authorities consistently and vocally assert that "there are no Rohingya in Myanmar". They object to the use of the name "Rohingya", call the group "Bengali", and argue that the Rohingya do not belong in Myanmar. They are not considered a "national race" and often referred to as "illegal immigrants" from Bangladesh. This was not always the case. Successive laws and policies regulating citizenship and legal status have become increasingly exclusionary in their formulation, and arbitrary and discriminatory in their application. Today, the overwhelming majority of Rohingya are *de facto* stateless, without proof of legal status or identity.

(a) Denial of birth certificates

461. Legal identity starts with a birth certificate: it provides legal recognition to a child. According to article 7 of the Convention on the Rights of the Child, all children have the right to be registered immediately after birth. Access to registration must not be undermined by discrimination of any kind, including on the basis of the child's or the child's parents' race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. All children should have access to birth registration in the country where they are born, including non-nationals and stateless children.[1019]

462. In Myanmar, there is a multiplicity of laws and procedures related to birth registration. The system is administered by several Ministries, making procedures complex and difficult to navigate, especially for the Rohingya.[1020] According to article 9 (b) of the Myanmar 1993 Child Law, "parents and guardians shall register the birth of the child in accordance with the law". The 1982 Citizenship Law contains a similar requirement but is only applicable to "citizens born inside and outside the State", and carries punitive measures for parents or guardians who fail to register their children. Failure to register a birth on time is also subject to criminal penalties under the Ward or Village Tract Administration Law.

463. According to credible reports the authorities stopped issuing birth certificates to Rohingya children in northern Rakhine in the 1990s, with no official reason given for this change of policy.[1021] Since then, the only "registration" of birth for Rohingya children in northern Rakhine is their inclusion in the so-called "household list".[1022] Such inclusion is a pre-requisite for obtaining identity documents, travel authorizations, marriage permissions, and enrolment in most government schools. Upon the request of parents, the village administrator or the "representative person from the village tract" can issue a "certificate of proof of birth".[1023] The cost of this procedure varies from one location and one family to another. Parents must then approach the immigration authorities and request that their household list be updated, paying another arbitrary fee.[1024] One interviewee from Buthidaung stated:

> *The Rohingya need to pay a large amount of money for receiving a certificate of proof of birth and include new born babies in the family list. The amount appears to vary from case to case. There is no written rule. The authorities made up all these rules only for the Rohingya in northern Rakhine State.*[1025]

[1019] See A/HRC/27/22, para. 11.

[1020] K-063.11. Myanmar's birth registration system differs by geographical area and the following Ministries have reportedly acquired parallel competences: Ministry of Immigration and Population; Ministry of Home Affairs; Ministry of Health; and Ministry of National Planning and Economic Development. Since 2012, village administrators were also attributed responsibilities.

[1021] K-063.10, K-063.11.

[1022] See this chapter, section B.5.b: Restrictions related to household lists.

[1023] K-063.11.

[1024] CI-061, CI-082, CI-094, DI-001, K-063.10.

[1025] CI-061.

464. An interviewee from Maungdaw explained how cumbersome this procedure is given the restrictions on movement and the risks associated with not updating the household list on time:

> *After the birth of my first daughter, I went to the village administrator and gave him 15,000 Kyat to send someone from his office to convey the message to the NaSaKa about my daughter's birth and to ask for her to be included on the household list. I could not go to the checkpoint myself because of the unavailability of transportation and the need for travel permission. I thought the village administrator had taken action to include my daughter on the list. A few days later, the authorities came to my village to check the family lists. They saw my daughter but she was not on the list. I had to give them 50,000 Kyat. I managed to gather the money with the help of others. Otherwise, I would have been imprisoned for six months.*[1026]

465. In December 2015, a new procedure targeting Rohingya children was outlined in a document setting out requirements for "birth list insertion of children from Bengali ethnics in household population list". According to credible reports, these additional administrative requirements have further slowed down the process. As a result, only a small number of new-borns were added to household lists in 2016, with inconsistent implementation from one area to another and reported cases of applications being rejected.[1027]

466. Some Rohingya children were added to a separate "black-listed children form" or "illegitimate children form". This included children whose parents had not received official marriage permission, children whose parents were not present at the household list updating exercise, adopted children, and children born in contravention of the local order limiting the number of children in Rohingya families to two. In April 2013, it was assessed that there were 5,111 "black-listed" children.[1028] It is believed that the number of children who were placed on these "black lists" is much higher.

467. The registration of new-borns in the household list has not been undertaken consistently, and as a consequence the number of unregistered Rohingya children in Rakhine State remains unknown. Estimates suggest that almost half of the children in Rakhine State remain unregistered.[1029]

468. The interim report of the Advisory Commission on Rakhine State included a recommendation to the Government to "roll out a comprehensive birth registration campaign - with door-to-door visits carried out by mobile teams - in order to reach all children".[1030] In July 2017, the Special Rapporteur on the situation of human rights in Myanmar stated that she had been informed by the authorities of efforts to improve birth registration in line with the interim recommendations from the Advisory Commission. She welcomed the issuance of over 20,000 birth certificates in Rakhine State.[1031] The Mission is not aware of further details regarding the issuance of these or any other birth certificates in relation to the interim recommendations. In its report on implementation (January to April 2018) the Committee for Implementation of the Recommendations on Rakhine State did not make any reference to the issuance of birth certificates for Rohingya children.[1032]

[1026] CI-094.

[1027] K-063.12, K-076.

[1028] K-063.10.

[1029] See Advisory Commission on Rakhine State, *Interim Report and Recommendations* (March 2017), p. 12; see also: CRC/C/MMR/CO/3-4, para. 43 and 44(d).

[1030] Ibid.

[1031] Yanghee Lee, United Nations Special Rapporteur on the situation of human rights in Myanmar, "End of mission statement" (21 July 2017).

[1032] Committee for Implementation of the Recommendations on Rakhine State, *Report to the People on the Progress of Implementation of the Recommendations on Rakhine State - January to April 2018.*

(b) Denial of citizenship

469. Legal status and identity is further determined by citizenship. The right to a nationality has been described as the "right to have rights".[1033] It is of vital importance to the realization of all other human rights and is recognised and protected in a series of international legal instruments,[1034] most of which apply to Myanmar. The prerogative of States to decide who their nationals are is not absolute. States must comply with their human rights obligations concerning the granting and loss of nationality.[1035]

470. The right to a nationality implies the right of each individual to acquire, change and retain a nationality. International human rights law explicitly prohibits the arbitrary deprivation of nationality. In order not to be arbitrary, denial of access to a nationality must be in conformity with domestic law and standards of international law, in particular the principle of proportionality. States have the obligation to ensure that all persons enjoy the right to nationality without discrimination of any kind, and that no one is denied or deprived of their nationality based on discriminatory grounds.[1036]

471. Deprivation of nationality resulting in statelessness will generally be arbitrary, unless it serves a legitimate purpose and is proportional.[1037] States should ensure that nationality is not denied to persons with relevant links to that State who would otherwise be stateless.[1038] This is particularly so for children. While States are not obliged to grant nationality to every child born in their territory, they are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he or she is born.[1039] One such measure is the conferral of nationality to a child born in the State if they would otherwise be stateless.[1040] Decisions regarding the acquisition, retention or loss of nationality must also meet minimum procedural standards, for example, issued in writing and open to effective administrative or judicial review.[1041] The statelessness of a person resulting from the arbitrary deprivation of his or her nationality cannot be invoked by States as a justification for the denial of other human rights.[1042]

Historical background

472. The current citizenship status of the Rohingya can only be understood in a historical context.[1043] The 1947 Constitution and the 1948 Union Citizenship Act of the newly independent Myanmar provided a relatively inclusive citizenship framework.[1044] In addition to citizenship based on ethnicity, section 4(2) of the Union Citizenship Act provided that "any person descended from ancestors who for two generations at least have all made any of the territories included within the Union their permanent home and whose parents and himself were born in any of such territories shall be deemed to be a citizen of the

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[1033] See for example, S. DeGooyer, A. Hunt, et al., *The Right to Have Rights* (Verso, London, 2018). The fundamental nature of the right to a nationality has been consistently reaffirmed by the United Nations General Assembly (for example, A/RES/50/152) and the United Nations Human Rights Council (for example, A/HRC/RES/7/10; A/HRC/RES/10/13; A/HRC/RES/13/2; A/HRC/RES/20/[illegible]; A/HRC/RES/26/14).

[1034] UDHR (art. 15), ICCPR (art. 24), CRC (art. 7), ICERD (art. 5), CEDAW (art. 9), CRPD (art. 18), ICPRM (art. 29), ASEAN Declaration (art. 18).

[1035] See A/HRC/13/34, para. 57.

[1036] A/HRC/13/34, paras. 21, 29, 57-58.

[1037] A/HRC/13/34, para. 59.

[1038] A/HRC/13/34, para. 36; see also 1961 Convention on the Reduction of Statelessness (although not ratified by Myanmar).

[1039] CRC, art. 7; United Nations Committee on the Rights of the Child, *General Comment No. 11: Indigenous children and their rights under the Convention*, 12 February 2009, CRC/C/GC/11; United Nations Human Rights Committee, *General Comment No. 17: Rights of the child* (Art. 24), 7 April 1989.

[1040] A/HRC/13/34, para. 60; A/HRC/31/29, para. 10.

[1041] A/HRC/13/34, para. 43.

[1042] See for example, A/HRC/RES/32/5.

[1043] The Mission has relied on credible secondary sources to summarise the relevant historical context.

[1044] 1947 Constitution, s. 11.

Union".[1045] Additionally, section 7 provided that a person could apply for citizenship if they were 18 years, resided in the country for at least five continuous years, and intended to reside in the country. As such, most long-term residents fulfilled the criteria, regardless of whether they belonged to one of Myanmar's "indigenous races".[1046]

473. Most Muslims who then lived in what currently constitutes Rakhine State were therefore included, whether their ancestry could be traced to pre-colonial times, or whether they were colonial-era migrants from the region. Additionally, there are strong indications that at the time the Myanmar authorities accepted the Rohingya as an "indigenous group". Both Prime Minister U Nu, and Sao Shwe Thaike, the country's first President, are reported to have referred to the Rohingya as an indigenous group of Myanmar, with U Nu referring to the Rohingya by name in a 1954 radio address, as "… our nationals, our brethren".[1047]

474. Citizens were required to register, after which a National Registration Card (NRC) was issued. At the end of 1960, the Government reportedly claimed to have issued 18 million NRCs, nearly the entire population at the time.[1048] Temporary Registration Cards (TRCs), known as "white cards", were issued in case of loss, damage or pending application for the NRC. Although NRCs or TRCs were not intended to be citizenship certificates, in reality they served as such.

475. At the start of General Ne Win's regime, the citizenship legal framework remained unchanged. The 1974 Constitution also did not alter the definition of "citizen" significantly. All Rohingya who were citizens during the 1948-1962 period were still to be considered citizens. However, in practice, the narrative that most Muslims in Rakhine State were illegal Bengali immigrants took root, in the context of an increasing emphasis on the importance of "national races" and the need to deport alleged aliens.[1049] In 1978, the Tatmadaw and immigration officials implemented a nationwide project called "Operation Dragon King" to register all citizens and aliens ahead of a national population census. Its implementation in Rakhine State led to more than 200,000 Rohingya fleeing to Bangladesh, amid allegations of serious human rights violations. The Government claimed that the number of Rohingya escaping from scrutiny was an admission of their illegal status. However, analysis suggests that the number of alleged illegal immigrants identified was very low.[1050] The Government agreed with Bangladesh to repatriate the "lawful residents of Burma who are now sheltered in the camps in Bangladesh".[1051] Nearly all refugees returned to Myanmar.

476. In this context General Ne Win initiated a review of the country's citizenship laws. He argued that citizenship under the civilian government had been poorly administered, often wrongly attributed, and leaving many people in legal limbo.[1052] He acknowledged that

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[1045] The 1948 Union Citizenship Act lists a range of other pathways to citizenship not reproduced here, including several non-automatic modes of acquiring citizenship (for example, naturalisation).

[1046] Defined as "the Arakanese, Burmese, Chin, Kachin, Karen, Kayah, Mon or Shan race and such racial group as has settled in any of the territories included within the Union as their permanent home from a period anterior to 1823 A. D. (1185 B.E.)", see 1948 Union Citizenship Act, s. 3(1).

[1047] E.g. M. Haque, "Rohingya Ethnic Muslim Minority and the 1982 Citizenship Law in Burma", *Journal of Muslim Minority Affairs, 37:4* (2017), pp. 454-469.

[1048] Nyi Nyi Kyaw, "Unpacking the Presumed Statelessness of Rohingyas", *15(3) Journal of Immigrant & Refugee Studies* (2017), p. 276.

[1049] Other groups were also considered "foreign", including Indians and Chinese. N. Cheesman, "How in Myanmar 'National Races" Came to Surpass Citizenship and Exclude Rohingya", *Journal of Contemporary Asia*, Volume 47, 2017 - Issue 3, pp. 461-483.

[1050] See analysis in Nyi Nyi Kyaw, "Unpacking the Presumed Statelessness of Rohingyas", *15(3) Journal of Immigrant & Refugee Studies* (2017), pp. 274-275, where the author quotes several State officials and State-run media indicating that the numbers of illegal immigrants found in operation Dragon King were very low (for example, that action was taken against a total of 2,296 people across the country).

[1051] 1978 Repatriation Agreement between the Government of the People's Republic of Bangladesh and the Government of the Socialist Republic of the Union of Burma (9 July 1978). Available at: https://dataspace.princeton.edu/jspui/bitstream/88435/dsp01th83kz538/1/1978%20Repatriation%20Agreement.pdf

[1052] Meeting held in the Central Meeting Hall, President House, Ahlone Road, 8 October 1982; translation of the speech by General Ne Win provided in The Working People's Daily, 9 October 1982.

many people had lived in Myanmar for long and that the government was "not in a position to drive away all those people who had come at different times for different reasons from different lands". However, he added that "leniency on humanitarian grounds cannot be such as to endanger ourselves", and there should be a system based on "three classes of citizens", with full citizenship reserved for "pure-blooded nationals". The two other classes were for people who "cannot be trusted fully" and who would therefore not receive "full citizenship and full rights". From the statement, it is clear that the people targeted included Muslims and Chinese.

Current citizenship regime

477. The 1982 Citizenship Law marked a further step towards an exclusively "ethnic" concept of citizenship.[1053] Together with the implementing regulations (the 1983 Procedures), the law created a citizenship framework with three distinct categories (or "classes") of citizens:

- Full citizenship is primarily reserved for "national ethnic groups … such as the Kachin, Kayah, Karen (Kayin), Chin, Burman (Bamar), Mon, Arakan (Rakhine) or Shan and ethnic groups who settled in Myanmar before 1823".[1054] The law further states that "the Council of State may decide whether any ethnic group is national or not".[1055] These initial eight groups were later broken down in a list of 135 sub-groups. They do not include the Rohingya or people of Chinese, Indian or Nepali descent.[1056] Full citizens are those with both parents holding a category of citizenship, including at least one full citizen; third generation offspring of citizens in the two other categories of citizenship; and persons who were citizens when the law entered into force.[1057] Full citizens receive a Citizenship Scrutiny Card.

- "Associate" citizenship is for those whose application for citizenship under the 1948 Citizenship Law was pending when the 1982 law came into force. A central body is tasked to decide on applications.[1058] They receive an Associate Citizenship Scrutiny Card.

- "Naturalized" citizenship may be granted to persons who provide "conclusive evidence" of entry and residence in Myanmar before 1948, and of the birth of their children in Myanmar.[1059] It may also be granted under certain circumstances by marriage or descent. In addition, applicants for "naturalized" citizenship must be at least 18 years, have command of one of the national languages, and be of "good character" and "sound mind". Naturalised citizens receive a Naturalised Citizenship Scrutiny Card.

478. Despite this legal framework being discriminatory in intent and purpose, Rohingya are not necessarily fully excluded from citizenship. First, the Constitution and the law provide that whoever was a citizen at its entry into force would remain a citizen.[1060] Second, while it is disputed whether the Rohingya are a "national race" and automatically entitled to full citizenship on that ground, many Rohingya would have at least qualified for "associate" or "naturalised" citizenship. Their third generation offspring would have been full citizens

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[1053] 1948 Citizenship Act and 1948 Citizenship (Election) Act were repealed in 1982.

[1054] 1982 Citizenship Act, art. 3.

[1055] Ibid., art. 4.

[1056] The list of 135 regularly features in State publications, including for example The Working People's Daily issue of 26 September 1990 ("Our Union of Myanmar where 135 national races reside").

[1057] 1982 Citizenship Act, arts. 5-7.

[1058] 1982 Citizenship Act, art. 23.

[1059] 1982 Citizenship Act, art. 42.

[1060] Section 345 of the 2008 Constitution explicitly provides that any person who is already a citizen according to law on the day of entry into force of the Constitution remains a citizen. Section 346 provides that citizenship, naturalisation and revocation of citizenship shall be prescribed by law. No laws have been adopted since the 1982 Citizenship Law, so this regime still applies.

by now. Third, the law also explicitly authorizes the State to confer any of the three categories of citizenship on any person "in the interests of the State".[1061]

479. In reality, however, the law has been implemented in a discriminatory and arbitrary manner.[1062] The authorities commenced enforcement of the law only after the SLORC took power in 1988. In a nationwide citizenship scrutiny exercise, the National Registration Card (NRC) had to be turned in and replaced by a Citizenship Scrutiny Card (CSC). However, Rohingya who presented their NRCs were reportedly refused a CSC, even when meeting the conditions for citizenship. Such arbitrary action was facilitated by provisions of the 1982 Citizenship Law allowing for broad discretion in decision making.[1063] NRCs were not returned to Rohingya; instead they received Temporary Registration Cards (or "white cards").[1064] These interim "white cards" became the *de facto* identification documentation for the approximately 700,000 Rohingya to whom they were issued for the next 20 years.[1065]

480. Further security operations in Rakhine State in the early 1990s again caused approximately 250,000 persons to leave for Bangladesh, with widespread allegations of serious human rights violations. While the Myanmar government again made claims that the issue was one of illegal Bengali immigrants,[1066] a repatriation agreement was signed with Bangladesh and Rohingya were accepted back in Myanmar.

Citizenship verification process

481. In 2011, the government introduced a "citizenship process" for members of the 135 recognised ethnic groups, with expedited applications.[1067] The Rohingya were not eligible for this process but subjected to a separate "citizenship verification" process, which has been protracted, cumbersome and increasingly coercive. By 2017, it had been completed for only a very small number of Rohingya.

482. A pilot citizenship verification exercises took place in Taung Pyo IDP camp in Myebon Township in July 2014. Rohingya were required to identify as "Bengali" when registering.[1068] Following protest from both Rohingya and ethnic Rakhine[1069], the programme was suspended, and then ended in December 2014, with less than one hundred Citizenship Scrutiny Cards issued by August 2015.[1070] Those granted citizenship in this

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[1061] 1982 Citizenship Act, art. 8.

[1062] N. Cheesman, "How in Myanmar 'National Races' Came to Surpass Citizenship and Exclude Rohingya", *Journal of Contemporary Asia*, Volume 47, 2017 - Issue 3, 2017, p. 12.

[1063] 1982 Citizenship Law, art. 71: "... no reasons need to be given by organizations invested with authority under this law in matters carried out under this law."

[1064] N. Cheesman, "How in Myanmar 'National Races' Came to Surpass Citizenship and Exclude Rohingya", *Journal of Contemporary Asia*, Volume 47, 2017 - Issue 3, 2017, p. 12; Nyi Nyi Kyaw, "Unpacking the Presumed Statelessness of Rohingyas", *15(3) Journal of Immigrant & Refugee Studies* (2017), p. 278.

[1065] Nyi Nyi Kyaw, "Unpacking the Presumed Statelessness of Rohingyas", *15(3) Journal of Immigrant & Refugee Studies* (2017), p. 279-280, referring to sources in the Department of Immigration and National Registration.

[1066] E/CN.4/1993/62, including the response letter from the Government to the United Nations Special Rapporteur on freedom of religion or belief. The letter stated that the allegations were "fabricated by some big countries and certain foreign news agencies", that "among those who fled were mostly poor people who were lured by stories that relief food and goods were being distributed on the other side" and that "some left because they were threatened by terrorist insurgents to burn down their houses", that the issue was one of "illegal immigration" which had also been the cause of the "outflow of people of Bengali stock back in 1978", and that the "Rohingya do not exist in Myanmar either historically, politically or legally". These are essentially the same explanations as those given by the Myanmar Government to the massive flight of Rohingya in late 2017.

[1067] V-054.

[1068] Ibid.

[1069] Advisory Commission on Rakhine State, Final Report, *Towards a peaceful, fair and prosperous future for the people of Rakhine* (August 2017).

[1070] K-063.1. Of approximately 1,300 eligible adult applicants, around 1,200 had applied. By late August 2015, Citizenship Scrutiny Cards had been issued to 97 adults and Naturalised Citizenship Scrutiny Cards to 820 adults, 656 children.

process were allowed to vote in the 2015 election but remain confined in camps without freedom of movement.[1071] The citizenship verification process was extended across Rakhine State in January 2015 but was suspended shortly after.[1072]

483. On 11 February 2015, President Thein Sein announced that the white cards would expire on 31 March 2015 and ordered them to be returned by 31 May 2015. This order pushed Rohingya further into legal uncertainty. Holders were given a "white card receipt" in exchange for the surrendered white card.[1073] By the deadline, only around 67 per cent of cards had been surrendered of which 80 per cent in Rakhine State.[1074]

484. Following the invalidation of the white cards, a new Identity Card for National Verification (ICNVs) was introduced with the stated aim to "scrutinize whether the applicant meets the eligibility to become a citizen of Myanmar".[1075] Rohingya applicants were required to indicate "Bengali" ethnicity on the application form, and the rights associated with the card were unclear, including the implication of the limited two-year validity.[1076] A campaign to compel acceptance of the card was conducted. It was reportedly accompanied by threats,[1077] with those retaining white card receipts in parts of northern Rakhine State facing increased restrictions.[1078] Despite this, the number of Rohingya applying for ICNVs was very low.[1079]

485. The "citizen verification process" restarted in 2016 under the NLD government, with a new attempt to persuade the Rohingya to accept the rebranded National Verification Cards (NVCs).[1080] However, scepticism following past experience and a limited understanding of the new process remained. Following the post-9 October 2016 "clearance operations", reports increasingly surfaced of attempts to coerce individuals into accepting the NVCs.[1081] By January 2017, just over 6,000 NVCs had been issued in Rakhine State, compared with nearly 400,000 white cards which were surrendered.[1082] On 8 February 2017, the Government appointed a Steering Committee in charge of issuing NVCs to expedite the process.

486. In August 2017, the Advisory Commission on Rakhine State observed that the sporadic implementation process and lack of communication, consultation and outreach from the Government had undermined public trust. It made a number of recommendations including ensuring those who had received citizenship would immediately enjoy the associated benefits, and a simplified verification process. It also urged the Government to ensure that the process was voluntary.[1083] In direct contradiction to this recommendation, from October 2017, the approach of requesting NVCs to be able to fish was extended to central Rakhine.[1084] The continued coercion on the Rohingya to accept the NVCs, and the build-up of pressure and tension in this regard in the lead-up to the August 2017 violence in northern Rakhine State, is discussed below.[1085]

[1071] K-063.1

[1072] K-063.2.

[1073] K-063.1.

[1074] Ibid.

[1075] Ibid.

[1076] Ibid.

[1077] Ibid.

[1078] Ibid.

[1079] V-047.

[1080] The requirement to state ethnicity on the application form and the two year validity period were removed. See: Advisory Commission on Rakhine State, Final Report, *Towards a peaceful, fair and prosperous future for the people of Rakhine* (August 2017).

[1081] K-063.5, V-047. See also chapter V, section D.2: A foreseeable and planned catastrophe.

[1082] The process was not only applicable in Rakhine, but also in other areas of the country. As of January 2017, over 16,000 NVCs had been issued in Shan State and 3,500 in Kayin. In both states, more than a quarter of the population do not have identity documents. See: Notification of the State Counsellor Office, "What is the ICNV" (27 December 2016); 2014 Myanmar Population and Housing Census.

[1083] Advisory Commission on Rakhine State, Final Report, *Towards a peaceful, fair and prosperous future for the people of Rakhine* (August 2017), pp. 26-28.

[1084] K-063.36

[1085] See chapter V, section D.2: A foreseeable and planned catastrophe.

487. The rights granted by the NVC remain unclear. Despite the State Counsellor's Office stating that card holders could travel anywhere in the country, specific additional provisions were included for Rakhine State.[1086] These provisions meant that, in practice, movement for the Rohingya is still severely limited.[1087] The Minister of Social Welfare, Resettlement and Relief indicated that movement restrictions may be relaxed.[1088] However, the Minister for Labour, Immigration and Population indicated in April 2018 that travel for NVC holders in Rakhine State would remain limited to travel within their townships, reportedly stating, "the information that NVC holders are entitled to travel to any place in the country is not true at all. We can't allow that to happen. I want to stress that the rights, entitlements and restrictions stipulated at the time of issuing NVCs remain unchanged."[1089]

488. Following decades of arbitrary treatment and legal uncertainty about their legal status and documentation, it is unsurprising that the Rohingya do not trust the Myanmar authorities and remain sceptical about the "citizenship verification process". In their view, these efforts and the "NVC" are a symbol of a discriminatory citizenship regime that only serves to further entrench their status as "immigrants".

(c) Denial of political participation

489. In the past, Rohingya have been allowed to participate in political processes. They were able to vote and stand for election in the 1990 parliamentary elections, and four Rohingya were elected as members of Parliament. In 2010, despite the Rohingya not officially being considered citizens, several laws were adopted to allow white card holders to participate in the political process. Three Rohingya were elected to Parliament and two to the Rakhine State Government.

490. However, in March 2014, Parliament amended the Political Parties Registration law to require leaders of political parties to be "full" citizens and members of parties to be "full" or "naturalized" citizens.[1090] Although, Parliament approved a bill in February 2015 which included a provision allowing white card holders to vote, on 11 February, following a public outcry, the then President Thein Sein issued an order stating that white cards would expire on 31 March 2015 and had to be returned by 31 May 2015. The Constitutional Court further ruled that the legislative provisions allowing white card holders to vote were unconstitutional, and the Parliament amended the election laws, removing white card holders from those eligible to participate in elections.[1091] This disenfranchised all white card holders, the vast majority of whom were Rohingya, from participation in the 2015 general elections.

(d) Conclusion

491. The Rohingya have gradually been denied birth registration, citizenship and membership of the political community. This lack of legal status and identity is the cornerstone of the oppressive system targeting the Rohingya. It is the consequence of the discriminatory and arbitrary use of laws to target an ethnic group and deprive its members of the legal status they once possessed. It is State-sanctioned and in violation of Myanmar's obligations under international law because it discriminates on the basis of race, ethnicity and religion. It has a profound impact on the enjoyment of all other human rights.

[1086] Notification of the State Counsellor Office, "What is the ICNV" (27 December 2016).

[1087] See this chapter, section B.2.b: Requirement for a temporary travel permit to travel between townships.

[1088] Video available at: https://www.facebook.com/theirrawaddyburmese/videos/2008808825829926/ (accessed August 2018). See also Joshua Lipes, "Myanmar Lifts Travel Restrictions on Rohingyas With 'Verification Cards'" (Radio Free Asia, 19 April 2018).

[1089] Video available at: https://www.facebook.com/standardtimedaily/videos/1451972574914692/ (accessed August 2018). See also the video at: https://www.facebook.com/NewsWatchJournal/videos/1669688809735580/ (accessed August 2018).

[1090] The amendments came into effect in September 2014.

[1091] The Carter Center, "Preliminary Findings of the Carter Center Expert Mission to Myanmar – April-July 2015".

492. Myanmar's legal framework pertaining to citizenship, and its application to the Rohingya in particular, is contrary to the prohibition of racial discrimination, both in the way it defines "citizens" and in its attribution of rights to distinct classes of citizens. Membership of a "national race" has been made the key criterion of citizenship. All others, including those who were born and lived in the country for generations, were gradually excluded. This extreme and narrow focus on ethnicity, and its arbitrary application in practice, has been profoundly discriminatory in intent, purpose and impact.

493. The treatment of the Rohingya constitutes an arbitrary deprivation of nationality. It is in violation of domestic laws. There was no permissible ground of revocation. The denial of nationality is based on prohibited racial grounds. It has resulted in large-scale statelessness, while it serves no discernible legitimate purpose.

494. The treatment further violates the right of every child to acquire a nationality, in particular where the child would otherwise be stateless. Where a child is born to stateless parents on the territory of a State Party to the Convention on the Rights of the Child, the State of birth is required to grant nationality. The right to a nationality as articulated in article 7 of the Convention would otherwise be meaningless.[1092] Its practice of not issuing birth certificates to Rohingya children and not granting nationality or appropriate documentation to children born on its territory is a violation of the Convention. The practice also has rendered children extremely vulnerable to other severe human rights violations. It deprives Rohingya children of a permanent record of existence and legal identity. It negatively impacts their access to health, education and other services. It deprives them of adequate protection.

495. The denial of legal status has culminated in 2015 in a complete disenfranchisement of the Rohingya from the political process. This symbolised their exclusion from the Myanmar political community and violates the right to participate in the government of the country.[1093]

496. The complete arbitrariness with which the Rohingya population has been treated is appalling. It violates legal certainty, the rule of law and international human rights law generally. Arbitrariness is shown in the way in which citizenship was revoked, domestic laws were applied or not, cards were handed out and revoked, and people were called "illegal immigrants", yet accepted back in repeated cycles of mass displacement and repatriation. Arbitrariness is also illustrated by the repeated temporary solutions that provide no legal certainty and remain largely unimplemented. The Rohingya have for decades wavered between different levels of participation in Myanmar's national life –from full citizen, to non-citizen with voting rights, non-citizen without voting rights, illegal immigrant that must leave, illegal immigrant that may stay and reside, illegal immigrant whose citizenship must be verified, – each status symbolised by a different card or its revocation.

497. The Myanmar State as an institution is responsible for its actions, including for the actions of previous governments. A strict application of the 1982 Citizenship Law is not a sign of respect for the rule of law, as professed by the current Government in its insistence on a "citizenship verification process" in line with that law and implemented at all cost, including coercion. It is the continuation by the civilian government of discriminatory policies put in place by a military regime. These policies seek to implement a racist and exclusionary vision. What is required is no less than a re-examination of the link between citizenship and "national races", and the removal of the latter concept in Myanmar politics and law. This link is particularly problematic considering Myanmar's flawed legal framework for the protection of human rights, which is largely based on citizenship, in contravention of international human rights law.

498. The emphasis on "national races" and the ensuing discriminatory practices have come to define the question of Rohingya citizenship and statelessness, with the Rohingya, ethnic Rakhine, and the Myanmar Government arguing the question of whether Rohingya

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[1092] A/HRC/13/34, para. 36; A/HRC/10/34, para. 64.

[1093] E.g., UDHR, art. 21(1).

are a "national race". This is beside the point. The issues of belonging to a "national race", citizenship rights, and human rights should not be conflated.

2. Denial of the right to freedom of movement

(a) Overview and legal framework

499. Article 13 of the UDHR guarantees the right to freedom of movement.[1094] This includes the right of everyone lawfully within the territory of a State to liberty of movement.[1095] It is an indispensable condition for the free development of a person.[1096] Under international human rights law, once a person is lawfully within a State, no restrictions on the right to freedom of movement, as well as any treatment different from that accorded to nationals, may be imposed. The only exception is if provided by law and necessary to protect national security, public order, public health or morals or the rights and freedoms of others.[1097] In the absence of such exceptions, non-citizens should have the right to move from one place to another.[1098] The overarching principle of non-discrimination also applies to the realization of the right to freedom of movement. Importantly, the statelessness of a person resulting from the arbitrary deprivation of nationality, cannot be invoked by States as a justification for the denial of other human rights, including freedom of movement.[1099]

500. Rohingya in Rakhine State face severe restrictions on their right to freedom of movement which do not fall within the permissible limitations set out above. Their ability to move between villages in the same township, between townships and outside Rakhine State is severely curtailed, adversely impacting every aspect of life.

501. The restrictions are imposed through a complex system of written or verbal instructions as well as security rules, physical barriers, abusive practices, and self-imposed restrictions based on fear. Implementation is arbitrary, depending on decisions by local officials. Movement, where permitted, is often associated with the payment of bribes and harassment. The detailed legal basis for all the restrictions imposed on the Rohingya remains unclear.

502. The Advisory Commission on Rakhine State summarised the situation regarding restrictions on freedom of movement as follows:

> *Freedom of movement is one of the most important issues hindering progress towards inter-communal harmony, economic growth and human development in Rakhine State. Movement restrictions have a wide range of detrimental effects including reduced access to education, health and services, strengthened communal segregation, and reduced economic interaction. The Government's rationale for maintaining the status quo is largely related to fears of destabilization, especially as the Rakhine community is expected to protest greater movement of Muslims within the state. Yet, if carefully done, easing restrictions on freedom of movement could have far-reaching positive social and economic benefits.*[1100]

(b) Requirement for a temporary travel permit to travel between townships

503. According to an instruction issued as early as June 1997 by the Rakhine State Immigration and National Registration Department, all Rohingya (referred to as "Bengali races") wishing to travel between townships in Rakhine State need to hold a temporary travel permit, called a "Form 4". This also applies to "foreigners and persons who are

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[1094] Also ASEAN Declaration, art. 15.

[1095] See ICCPR, art. 12.

[1096] United Nations Human Rights Committee, *General Comment 27: Freedom of movement (Art. 12)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9.

[1097] Ibid.

[1098] See also A/HRC/19/43, para. 8-10

[1099] E.g. A/HRC/RES/32/5.

[1100] Advisory Commission on Rakhine State, Final Report, *Towards a peaceful, fair and prosperous future for the people of Rakhine* (August 2017), p. 33.

doubted as foreigners". The traveller must report to the authorities about his or her arrival and departure. The Form 4 is only valid for a given time and the traveller must surrender it to the issuing officer upon completion of the approved journey.[1101] Despite not belonging to any of these categories, the Kaman, who are Myanmar citizens, have also been required to travel with a Form 4, indicating a broader application to "Muslims".[1102] Provisions from the 1997 instruction continue to be enforced.

504. Violation of the 1997 instruction is punishable by section 188 of the Penal Code, with imprisonment of up to six months, or up to two years under the 1949 Residents of Myanmar Registration Act.[1103] In 2011, the Maungdaw Township General Administration Department issued Order 1/2011 reiterating the need for Rohingya residing in Maungdaw to obtain a Form 4 to travel between townships. The order refers to the non-observance by "some Bengalis" of the requirement to obtain Form 4 and emphasizes that "serious consequences would be faced in accordance with existing laws and section 188".

505. The process for obtaining a Form 4 is onerous and lengthy, taking from a few days to weeks or months.[1104] The applicant must first obtain a letter of recommendation from the village administrator and then travel to the township immigration office (LaWaKa) to apply for a permit.

506. According to credible reports, until 2012 a Form 4 used to be valid for 30 days. After the 2012 violence, the issuance of the Form 4 travel permit was temporarily suspended for Rohingya in Maungdaw, Buthidaung and Rathedaung. It was later resumed for travel between Maungdaw and Buthidaung but with a reduced validity, often between one and two weeks.[1105] Since 2012, Rohingya residing in Rathedaung Township have not been able to travel to the centre of Rathedaung town, which has effectively prevented them from visiting the LaWaKa office and being able to apply for a Form 4 to travel to other townships legally.

507. The documents to be submitted when applying for a Form 4 permit include a village departure certificate, a copy of the household list and an identity document. Until 2015, the Rohingya were asked to present their temporary registration certificates ("white cards") and since then their temporary registration certificate receipt. According to credible sources, in early 2017 the local authorities informed community leaders in northern Rakhine State that only holders of the National Verification Card (NVC) would be able to travel between townships.[1106]

(c) Specific restrictions within northern Rakhine and harassment at checkpoints

508. In northern Rakhine State, Rohingya have faced restrictions on movement for decades. In addition to the Form 4 procedure applicable throughout Rakhine State to move from one township to another, Rohingya in northern Rakhine State even need permission to travel from one village to another. In order to do so, they must obtain from their village administrator an authorisation, called "village departure certificate". The procedure and the cost of the certificate vary between locations, although the price generally depends on the duration of stay outside the village. The traveller is also required to inform the village administrator at destination and to pay a similar fee.[1107] The legal basis for these requirements remains unclear. However, their adverse and discriminatory impact is apparent.

[1101] K-107.

[1102] CI-167, CI-168, CI-171. See this chapter, section C.2: Kaman Muslims of Rakhine State.

[1103] Sections 6(2) and 6(3) of the 1949 Residents of Myanmar Registration Act penalize the failure to comply with a requirement to produce a required document with imprisonment of up to two years with or without hard labour and/or a fine. Article 188 of the Penal Code penalizes the act of disobeying an order given by a public servant with up to six months imprisonment and/or a fine

[1104] CI-061, CI-062, CI-065, CI-073, CI-079, CI-082, CI-085, CI-090, CI-173, DI-001, DI-003, DI-013, DI-025, DI-046, DI-051, DI-073.

[1105] K-063, V-047.

[1106] K-063, K-076, V-047.

[1107] CI-061, CI-063, CI-064, CI-080, CI-082, CI-089, CI-090, CI-092, CI-094, DI-001, DI-002, DI-006, DI-010, DI-025, DI-026, DI-038, DI-051, DI-053, DI-073.

509. Other restrictions regarding freedom of movement in northern Rakhine State stem from curfew orders that have been in place in Maungdaw and Buthidaung since June 2012.[1108] Such orders were also in place in other parts of Rakhine State but have since been lifted.

510. In northern Rakhine State, restrictions on freedom of movement are enforced through security checkpoints. These checkpoints were previously operated by the NaSaKa. Since 2013, they are mainly operated by the Border Guard Police and the Myanmar Police Force, but also the Tatmadaw. According to credible reports, as of October 2016 there were as many as 126 checkpoints in northern Rakhine State alone. This number was reportedly increased to 161 as of August 2017.[1109] At checkpoints, Rohingya often face questioning, searches of vehicles and harassment.[1110] The ethnic Rakhine must also go through these checkpoints but usually do not face similar intimidation and harassment. One interviewee explained:

> *There were many checkpoints between villages. The security forces would check our cars, documents, and bags. They only checked the Rohingya, never the Rakhine. When a vehicle was stopped at a checkpoint, all the passengers had to get out, and the women and men would stand on different sides. Officials would check bags inside the vehicle, making a mess. Then, they would start checking people. Usually men had to go through a body check; for women there were female officers to check their body for anything suspicious. They would also check the handbags of women. If they found medicine, even a very basic type, they would ask why you are taking this. They would also check all our documents. The procedure would take between 45 minutes and one hour, depending on the number of passengers.*[1111]

511. Moreover, security forces regularly impose arbitrary and often substantial "transit fees" for passage through checkpoints.[1112] One interviewee summarised how bribes had to be paid to obtain the village departure certificate in Maungdaw, but also when passing through checkpoints: "If you didn't have the certificate you had to pay a lot, but even if you had it, you had to pay something."[1113] Rohingya who travel without the necessary documents risk arrest[1114] and prosecution under section 188 of the Penal Code or the 1949 Residents of Myanmar Registration Act. Another interview succinctly stated, "You will not find a single person who did not pay money to the authorities".[1115]

(d) Specific restrictions in central Rakhine

512. In central Rakhine, restrictions on freedom of movement of the Rohingya and the Kaman significantly increased after the 2012 violence. They apply to both displaced and non-displaced populations. This affects the Rohingya and Kaman residing in villages in central Rakhine (estimates range from 200,000 to 230,000), and an additional 128,000 Rohingya and Kaman living in displacement camps and sites, the majority in rural areas of Sittwe Township.[1116]

513. Rakhine and Rohingya communities have been segregated in central Rakhine since the 2012 violence. The authorities state this is to ensure the protection of the communities, but without any specific justification relating to the actual risks.[1117] While most restrictions are not formally codified, they are reportedly strictly enforced. According to credible

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[1108] See this chapter, section C.4.a: Curfews and prohibition of meetings of more than five people.

[1109] K-076.

[1110] CI-062, CI-063, CI-064, CI-079, DI-13, DI-026, DI-061.

[1111] DI-026.

[1112] CI-061, CI-063, CI-065, CI-079, CI-082, CI-090, CI-173, DI-001, DI-003, DI-013, DI-025, DI-051.

[1113] DI-051.

[1114] CI-080, K-076.

[1115] CI-094.

[1116] K-113.7.

[1117] Danish Refugee Council, European Commission's Directorate-General for European Civil Protection and Humanitarian Aid Operations, United Nations High Commissioner for Refugees, CCCM Cluster, Joint IDP Profiling Service, *Sittwe Camp Profiling report* (June 2017), p. 12.

reports, when Rohingya or Kaman try to move in central Rakhine beyond locally accepted boundaries, they are frequently arrested and subjected to ill-treatment.[1118]

514. Movement of the non-displaced Muslim population is tightly curtailed by the security forces, local authorities and communities. They are not allowed to travel to Sittwe town, or other main towns in central Rakhine, except very rarely for emergency medical treatment or other exceptional circumstances. These towns previously had substantial Muslim communities. Rohingya and Kaman have also been barred from entering many of the Rakhine villages in central Rakhine State, although there are examples where local arrangements have allowed this.[1119]

515. As early as September 2012, the then United Nations Special Rapporteur on the situation of human rights in Myanmar warned against the risks of such a policy of segregation:

> *The current separation of Muslim and Buddhist communities following the violence should not be maintained in the long term. In rebuilding towns and villages, Government authorities should pay equal attention to rebuilding trust and respect between communities, while confronting deep-rooted prejudices and discriminatory attitudes based on ethnicity and religion. These have been made manifest in the anti-Rohingya discourse and in the inaccurate and inflammatory images of the violence in the media, including social media. A policy of integration, rather than separation and segregation, should be developed at the local and national levels as a priority.*[1120]

516. Despite numerous calls by two United Nations Special Rapporteurs[1121], the United Nations High Commissioner for Human Rights[1122] and others, six years after the 2012 violence, this policy of segregation has been maintained and contacts between communities have been extremely limited in central Rakhine. In practice, this policy has contributed to growing mistrust and misunderstandings. It has also provided a conducive environment for dehumanization and hate campaigns and for wrong perceptions to be engrained in the minds of each community.

Displacement camps and sites

517. The displacement camps and sites established after the 2012 violence[1123] are effectively places of deprivation of liberty. They are cordoned off from the outside world, with Rohingya and Kaman unable to move outside freely.[1124] In most cases, access is strictly controlled by checkpoints set up by the Myanmar Police Force. Moreover, many camps are surrounded by barbed wire fencing. There are further police checkpoints and military posts in the camp area, further limiting freedom of movement. A large military base is located near the Sittwe camps, where the majority of displaced people are accommodated. According to credible reports, even some local staff members of international organizations have not been able to leave the camps for the last few years.[1125]

518. Given the severe restrictions on freedom of movement imposed on the camp population, some humanitarian actors and analysts have referred to the camps as "internment camps":[1126]

[1118] K-069.

[1119] K-069, V-047.

[1120] A/67/383, para. 61.

[1121] A/67/383, para. 61; A/68/397, para. 52; A/HRC/25/64, para. 82(c); A/HRC/28/72, para. 60.

[1122] A/HRC/32/18, para. 54.

[1123] See this chapter, section C.1: Emblematic incidents.

[1124] Danish Refugee Council, European Commission's Directorate-General for European Civil Protection and Humanitarian Aid Operations, United Nations High Commissioner for Refugees, CCCM Cluster, Joint IDP Profiling Service, *Sittwe Camp Profiling report* (June 2017), p. 12.

[1125] DM-004, DM-005, V-047.

[1126] QM-002, QM-005, V-337.

> *These camps should be viewed as internment camps as the people there are not seeking refuge (at the heart of the definition of a camp for internally displaced people). Rather, they are "locked up". To get into the camp you have to pass through a series of barbed wire fences, then an army checkpoint, and then a police checkpoint.*[1127]

> *After 2012, the situation in central Rakhine changed with the establishment of the camps, and the unresolved question of whether these should be considered displaced people, or people forcibly transferred into detention centres.*[1128]

Image from 2018 showing the guarded entrance to the Sittwe displacement camps and the barbed wires all around

519. In 2015, the Government denied the existence of restrictions on the freedom of movement of the displaced population in central Rakhine. In a response to a report of the Special Rapporteur on the situation of human rights in Myanmar, the Government stated:

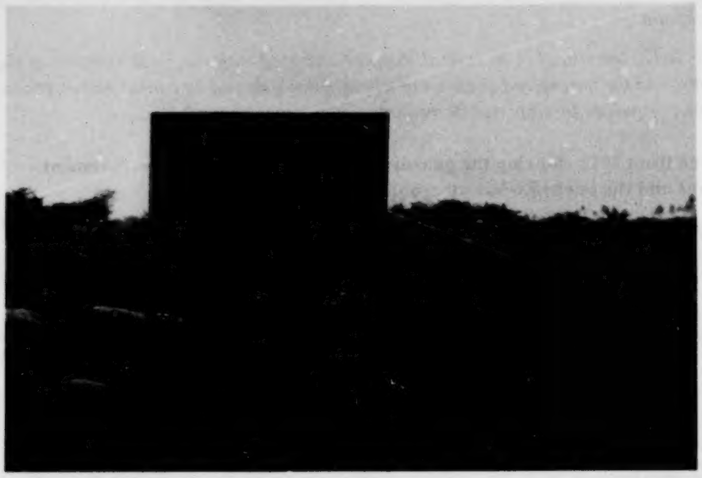
> *There is no restriction on the freedom of movement of the IDPs. Security presence in IDP camps is simply to prevent recurrence of communal violence while the level of distrust between the two communities is still high. The two communities are staying separately because they feel that they are safer that way. It will take time for both communities to heal themselves to relieve from mental trauma. It needs to wait for a reasonable time until both communities regain mutual understanding and trust. Neither the government nor others can force them to live side-by-side.*[1129]

[1127] QM-005.

[1128] QM-002.

[1129] A/HRC/25/64/Add.1, para. 15.

Image from 2018 showing the sign board at the entry of the Basara camps in Sittwe. It states that the area is "restricted" with "no admittance without the approval of State Government to come in and out"



Despite the statement of the Government, the existence of the restrictions on the freedom of movement of the displaced population is undeniable. It is attested by the checkpoints and sign boards at the entry of the camps, the barbed wires, the experience of those trying the leave the camps, and the simple fact that 128,000 people have not been able to go back to their place of origin, despite their desire to do so.

Aung Mingalar

520. Since June 2012, the only Muslims still living in Sittwe town are the approximately 4,000 Rohingya and Kaman remaining residents of the Aung Mingalar quarter.[1130] This area is effectively a closed ghetto, where Muslims are trapped and have lived separately from the rest of the population since 2012. It is guarded by armed police, checkpoints and barbed wire. The Mission also received allegations that the Tatmadaw maintains a small presence in the school grounds in Aung Mingalar. People can only leave the quarter with special permission and in organized convoys with police escorts.[1131] Apart from emergency medical referrals, the only travel which Muslims can normally undertake outside Aung Mingalar is to the displacement camps and sites in rural Sittwe, where a limited number of people can sometimes access markets and buy food. This travel is strictly controlled by security forces, who only allow a shuttle escorted by the police to travel from Aung Mingalar to the camps. The shuttle requires payment to the police.[1132]

521. Access to the nearby medical facilities, Sittwe markets and livelihoods are largely cut off for the residents of Aung Mingalar, who live in effective isolation. Although the Sittwe General Hospital is nearby, residents have to go through the cumbersome emergency referral process to access it.[1133] There is a sign board at the entrance of Aung Mingalar, similar to the one at the entrance of the Sittwe camps, restricting access (see picture above). According to credible reports, in May 2017 Rakhine nationalists wrongly claimed that the population of Aung Mingalar had grown from 4,000 to 20,000. The Rakhine State Government subsequently initiated a verification process and found that the population had remained static. Nevertheless, new restrictions were reportedly introduced after this verification process, requiring residents of Aung Mingalar wishing to travel to the Sittwe

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[1130] It is reported that the population of Aung Mingalar was approximately 16,000 before the 2012 violence.

[1131] K-069; V-047.

[1132] DM-004; V-047.

[1133] See this chapter, section B.3.b: Restrictions on access to healthcare.

camps to buy food or access medical care, to register and have their picture taken, with the aim of ensuring that the same individuals would return after their visit to the camps.[1134]

Image from 2018 of the restricted entrance to Aung Mingalar

(e) Guest registration and household inspections

522. According to the 2012 version of the Ward or Village Tract Administration Law, people hosting overnight guests at their home – even for a single night – had to register with the ward or village tract administrator. The law was strongly criticized by civil society and the Special Rapporteur on the situation of human rights in Myanmar[1135] as a tool for intimidation and harassment of specific individuals, groups or communities. In northern Rakhine State, the law was strictly implemented and combined with other restrictions on the right to freedom of movement.[1136]

523. Although the Ward or Village Tract Administration Law clearly states, "The ward or village tract administrator shall not collect any currency in respect of guest list information", many Rohingya in northern Rakhine had to pay the village administrator to register overnight guests.[1137] The amount was arbitrary and depended on the relationship between the applicant and the village administrator.[1138] When overnight guests without permission were found during the nightly household inspections, Rohingya were arrested and had to pay another bribe to get released.[1139]

524. In 2016, the Ward or Village Tract Administration Law was amended. The requirement for mandatory guest registration was made applicable only to guests staying in somebody's house for a month or more.[1140] However, additional investigation is required to confirm whether this change in the law has been followed by a change of practice on the ground in Rakhine and elsewhere.

(f) Conclusion

525. Rohingya across Rakhine State face severe movement restrictions. They need travel permits to leave their township. In northern Rakhine State, movement between villages is

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[1134] DM-004.

[1135] A/71/361, para. 19; A/HRC/31/71, Annex I; A/70/412, para. 29.

[1136] CI-061, CI-062, CI-065, CI-069, CI-070, CI-079, CI-089, CI-090, DI-001, DI-004, DI-009, DI-013, DI-025, DI-026, DI-038.

[1137] CI-061, CI-062, CI-089, DI-001, DI-004, DI-026.

[1138] CI-062, DI-001.

[1139] CI-062, CI-065, CI-069, CI-070, DI-004, DI-009, DI-026, DI-038.

[1140] Ward or Village Tract Administration Law, Chapter IX, section 17.

also restricted and curfews are imposed. Restrictions are enforced through multiple security checkpoints, which had reportedly risen to over 160 before 25 August 2017.[1141] In central Rakhine State, severe restrictions imposed since the 2012 violence have resulted in a policy of segregation of communities. Rohingya can generally not move to ethnic Rakhine areas, including the main towns and markets. For the last six years, 128,000 Rohingya and Kaman have been confined in displacement camps or sites and 4,000 Muslims have been confined in the Aung Mingalar ghetto in Sittwe town. These restrictions adversely impact every aspect of their life, including their access to food, livelihood, health and education – and in extreme cases leading to preventable deaths. They are compounded by arbitrary fees, extortion and the risk of arrest.

526. While their citizenship rights and status are debated in Myanmar, it is not denied that most Rohingya are residents of Myanmar. As such, they are entitled to freedom of movement. Moreover, their non-citizenship, which results from an arbitrary deprivation of their nationality, cannot be invoked to deny other human rights. No security requirement necessitates the imposition of these severe and arbitrary movement restrictions for such a long period of time, without any clear legal basis. Therefore, the restrictions violate the right to freedom of movement of the Rohingya.

527. Specifically with regard to the displacement camps and sites established in central Rakhine State after the 2012 violence, the Mission finds that – beyond a violation of their right to freedom of movement – the confinement of Rohingya and Kaman constitutes a deprivation of liberty. Deprivation of liberty involves a more severe restriction of movement within a narrower space than interference with liberty of movement.[1142] While Rohingya and Kaman enjoy some limited ability to move within the camps or sites, many of the camps are surrounded by barbed wire, military camps, security guards and checkpoints, including inside the camps. Access to the camps and sites is restricted. The situation in the Aung Mingalar ghetto is similar or even worse on certain aspects. Residents cannot freely leave the displacement camps and sites and Aung Mingalar. They have inadequate access to health care, education and livelihoods. Holding a group in such conditions for over six years amounts to a deprivation of their liberty.

528. The Government justifies their confinement on security grounds. However, the Mission fails to see the present, direct and imperative threat that would justify the security detention of 132,000 people[1143] for over six years and that could not be addressed by alternative and less invasive means.[1144] This is aggravated by the lack of known legal basis or review of the confinement. Were confinement of communities absolutely required to maintain security, the Mission does not see why it should only affect the Muslim communities of Rakhine State. The Mission has reasonable grounds to conclude that the holding of Rohingya and Kaman in these camps and sites and in the Aung Mingalar ghetto constitutes an arbitrary and discriminatory deprivation of their liberty.

529. Beyond the question of lawfulness, the Mission calls into question the effectiveness of policies of segregation to mitigate an alleged or perceived security threat, especially for long periods of time. Rather than contributing to sustainable peace in Rakhine State, they break all relationships between communities. The Mission has concluded that they contributed directly to the events of 2016 and 2017.

530. Considering the lack of reasonable justification for these movement restrictions, in some cases amounting to deprivation of liberty, and their discriminatory implementation, the Mission concludes that they are a second building block of the system of oppression and persecution targeting the Rohingya.

[1141] K-076.

[1142] United Nations Human Rights Committee, *General Comment No. 35: Liberty and security of persons (Art. 9)*, 16 December 2014, CCPR/C/GC/35, para. 5.

[1143] 128,000 Rohingya and Kaman in displacement camps and sites and 4,000 in Aung Mingalar.

[1144] United Nations Human Rights Committee, *General Comment No. 35: Liberty and security of persons (Art. 9)*, 16 December 2014, CCPR/C/GC/35, para. 15.

3. Restrictions on access to food, livelihoods, health care and education

(a) Restrictions on access to food and livelihood

Overview and legal framework

531. The human right to adequate food is firmly entrenched in international human rights law, including article 25 of the UDHR, article 11 of the ICESCR, articles 24 and 27 of the CRC, and article 28 of the ASEAN Human Rights Declaration. To realize the right to food, States must ensure that food is available, economically and physically accessible, and adequate.[1145] The right is realized when "every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement."[1146] The right to food is closely linked with the right to life: "without food there is no life, and with the wrong food, life is shorter and more prone to ill-health".[1147] The right to life requires States to take measures to increase life expectancy, especially in adopting measures to eliminate malnutrition.[1148]

532. While the right to food is to be progressively realised, the United Nations Committee on Economic, Social and Cultural Rights has established that States have immediate core obligations, regardless of resources and/or level of development, to ensure freedom from hunger; non-discrimination; and the protection of vulnerable populations. This includes the provision of access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone.[1149]

533. In Rakhine State, the Rohingya have long relied on fishing, farming and trading to provide for themselves and their families. However, movement restrictions generally, as well as specific restrictions on access to fishing, agricultural lands and forests, impede their access to food and livelihoods. The fear of crossing checkpoints – due to the harassment and extortion it entails – has had a similarly negative impact.

Access to food and malnutrition

534. According to a survey by the Myanmar Government in 2015, Rakhine State had the highest rates of global acute malnutrition, at 13.9 per cent, and severe acute malnutrition, at 3.7 per cent, in the country.[1150] However, in northern Rakhine, where most Rohingya live, rates were four to five times higher – for severe acute malnutrition, 19 per cent in Maungdaw Township and 15.1 per cent in Buthidaung Township – above the World Health Organization emergency threshold of 15 per cent.[1151] The health impacts of malnutrition may include heightened risk of preventable deaths and deterioration of pre-existing conditions, especially for children. A Word Food Programme report on northern Rakhine State in mid-2017 highlighted limited access to livelihoods, due largely to freedom of movement restrictions and the increased security presence, as being a main contributory cause of malnutrition. It summarised the situation at that time:

> *In line with the previous remote emergency assessments, the survey confirmed a worsening of the food security situation in already highly vulnerable areas after the October 2016 incidents and subsequent security operations. Nearly one third of the*

[1145] United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 12: The right to adequate food (Art. 11)*, 12 May 1999, E/C.12/1999/5.

[1146] Ibid, para. 6.

[1147] A. Eide, "Adequate Standard of Living", in *International Human Rights Law*, 2nd ed., D. Moeckli, S. Shah and S. Sivakumaran (Oxford University Press, Oxford, 2014), p. 199.

[1148] United Nations Human Rights Committee, *General Comment No. 6: Right to life (Art. 6)*, 30 April 1982, HRI/GEN/1/Rev.1, para. 5.

[1149] United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (Art. 12)*, 11 August 2000, E/C.12/2000/4, para 43(b).

[1150] Ministry of Health and Sports, *Myanmar - 2015-2016 Demographic and Health Survey - Key Findings* (2017); see also: The UN Network, "Nutrition Situation Analysis", abridged version (June 2017).

[1151] K-076.44.

> *population was severely food-insecure and in need of humanitarian assistance. Only 14 per cent of women achieved minimum dietary diversity and none of the children met the minimum adequate diet. Income opportunities were scarce and households could not access sufficient food to cover their needs. About half of the markets were not functioning or were only partially operational, food prices were highly volatile and supply of affordable foods in many markets was scarce.*[1152]

535. The report further stated that poor child feeding practices may have increased wasting (low weight-for-height) and stunting (low height-for-age) in children, both symptoms of acute undernutrition. Of greatest concern, the report estimated that 80,500 children under the age of five were expected to be in need of treatment for acute malnutrition over the subsequent 12 months.[1153] This preceded the "clearance operations" that began on 25 August 2017.

536. The various waves of violence in Rakhine State have had a serious adverse impact on the enjoyment of the right to food. Interviewees from northern Rakhine reported increased hunger following the 2012 violence due to further movement restrictions and fear.[1154] One interviewee explained how they would only eat one meal a day out of fear to leave the house.[1155] The following account was also provided regarding the impact of the violence on access to food:

> *People couldn't go to work and couldn't earn money. At one point, there was no food. People were trying to help each other, but it was particularly difficult for very poor people. Initially, nobody dared going outside. Then hunger was such that people started to take risks and go out to work. They thought: "better to die by a bullet than to die of hunger".*[1156]

537. The 2016 and 2017 "clearance operations" have had a devastating impact.[1157] On 9 January and 23 August 2017, a group of United Nations Special Rapporteurs addressed two urgent appeals to the Government of Myanmar to raise the issue.[1158] The August 2017 communication highlighted information regarding "evident deterioration of the food security situation in northern Rakhine" and raised concern about the "long term, chronic lack of access to adequate food in the context of prolonged security operations in the area". The Special Rapporteurs highlighted allegations that one-third of homes in northern Rakhine were already experiencing extreme food deprivation, and that children were especially vulnerable, as reflected in their high malnutrition rates. It should be noted that this urgent appeal preceded the commencement of the August 2017 "clearance operations" by two days, after which access to food and its consequences further deteriorated significantly.

Restrictions on access to livelihoods

538. Rohingya have faced severe restrictions on their access to livelihoods for decades. Already in the 1990s, strict enforcement of movement restrictions against the Rohingya in northern Rakhine had reportedly led to severe impoverishment, to the extent that many people were in need of humanitarian assistance.[1159] Movement has been further restricted

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[1152] World Food Programme, *Food security assessment in the northern part of Rakhine State - Final report* (July 2017).

[1153] Ibid.

[1154] DI-009, DI-053, DI-054.

[1155] DI-009.

[1156] DI-054.

[1157] World Food Programme, *Food security assessment in the northern part of Rakhine State - Final report* (July 2017); V-047.

[1158] UA MMR 6/2016 available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=22927 and UA MMR 8/2017 available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23297

[1159] Irish Centre for Human Rights, *Crimes against Humanity in Western Burma: The Situation of the Rohingya* (2010), p. 99; International Federation of Human Rights Leagues, *Burma – Repression, discrimination and ethnic cleansing in Arakan* (April 2000), p. 20.

throughout Rakhine State with each wave of violence.[1160] The Rohingya in central and northern Rakhine have been restricted from accessing fishing areas (including coastal waters and inland waterways), farmlands, markets, or employment outside their immediate areas, thus severely limiting their income.[1161] Restrictions on access to livelihoods have been a principal contributory factor forcing Rohingya to leave Myanmar.[1162]

539. In central Rakhine, severe restrictions on freedom of movement imposed after the 2012 violence have significantly impacted upon access to livelihoods. For example, Rohingya in villages near Sittwe were reportedly forced to sell personal assets and reduce the numbers of meals in order to survive.[1163] Similarly, in the first half of 2013 over 10.000 Muslims from isolated villages with very limited access to livelihoods reportedly moved to displacement camps and sites. They were not classified as IDPs and therefore had difficulty accessing humanitarian assistance.[1164]

540. Access to fishing has been severely curtailed by curfew orders since 2012.[1165] These have often prevented access at the peak night and early morning periods. Fishermen are routinely required to pay a fee to the security forces operating checkpoints, and on return are often required to hand over part of their catch. According to credible reports, Rohingya found fishing during curfew hours or in the wrong area have been subjected to ill-treatment, arbitrary arrests and even killings.[1166] United Nations Special Rapporteurs addressed an urgent appeal to the Government of Myanmar about the alleged torture of fishermen by BGP officers in June 2016, causing the death of one.[1167] The Government denied the allegations.[1168]

(b) Restrictions on access to healthcare

Legal framework and overview

541. Article 25 UDHR protects the right of everyone to a standard of living adequate for their and their family's health, including medical care. Article 12 ICESCR protects the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Human rights standards on the right to health are also included in article 12 CEDAW, article 24 CRC, article 25 CRPD, as well as in article 29 ASEAN.

542. The right to the highest attainable standard of health includes the right to a system of health protection that provides equality of opportunity for people to enjoy the highest attainable level of health.[1169] Key elements of the right to health are non-discrimination and equal treatment. This includes the right to equality of access to health care and health services. The Committee emphasized that the ICESCR proscribes any discrimination in access to health care and underlying determinants of health, as well as means and entitlements for their procurement. Prohibited grounds of discrimination include race, colour, sex, language, religion, or social origin.[1170]

543. The right to health is to be progressively implemented. Yet, as a party to the ICESCR, CRC, CEDAW and CRPD, Myanmar has an immediate obligation, regardless of resources, to ensure access to health facilities, goods and services on a non-discriminatory

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[1160] See this chapter, section B.2. Denial of the right to freedom of movement.

[1161] K-113.3.

[1162] CI-062, CI-079, CI-080.

[1163] K-076

[1164] K-076.

[1165] See this chapter, section C.4.a: Curfews and prohibition of meetings of more than five people.

[1166] K-076.

[1167] UA MMR 3/2016, available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=3349

[1168] Response of the Government of Myanmar to UA MMR 3/2016, 22 December 2016, available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=80722

[1169] United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (Art. 12)*, 8 November 2000, E/C.12/2000/4, para. 8.

[1170] Ibid., paras. 18-19.

basis, especially for vulnerable or marginalized groups. It must also ensure equitable distribution of all health facilities, goods and services.[1171]

544. The availability of functioning health facilities and services in Rakhine State for all communities is low, with an average of five health workers per 10,000 inhabitants. This is well below the national average of 16 health workers per 10,000 people, and the World Health Organization recommended minimum of 22.8 health workers per 10,000 people.[1172] The Mission notes that all communities in Rakhine State have inadequate access to healthcare, and that under-development and poor transportation make access to healthcare difficult for all, especially those living in remote areas. The Rohingya, however, face additional barriers due to travel restrictions, financial hurdles, cumbersome bureaucratic procedures, and overall discriminatory treatment.[1173] Restrictions are often based on official policies and practices.

Movement restrictions on access to health

545. Movement restrictions undermine Rohingya access to health services. The Rohingya and Kaman communities face arbitrary and highly cumbersome procedures to travel to hospitals. These are particularly harmful in the case of medical emergencies as they lead to late diagnosis and delays in life-saving treatment. They can result in preventable deaths. For example, one interviewee from northern Rakhine explained that it was easier to access medical treatment by travelling to Bangladesh than to nearby Sittwe hospital.[1174] Another stated:

> *One of my relatives had to go to Yangon to get medical treatment. She tried to get the necessary papers to travel to Yangon but didn't get them and died at the Sittwe hospital. If Rohingya have a minor sickness it is okay, but if the sickness is serious they can't get proper treatment.*[1175]

546. In central Rakhine State, the restrictions on freedom of movement imposed after the 2012 violence resulted in Rohingya and Kaman being denied access to their nearest hospitals and clinics.

547. One United Nations official shared an experience about attempts to engage with township authorities and Rakhine community leaders in central Rakhine. When the official tried to challenge township authorities about their failure to ensure that Rohingya could access emergency medical care, the response was that this was a policy matter that needed to be discussed at a higher level. Rakhine community leaders on the other hand justified this approach on various grounds, including the claims that Muslim communities "do not belong to Myanmar" and that their population "needs to be controlled".[1176]

548. As a mitigating measure, humanitarian actors have put in place a medical emergency referral system for Rohingya and Kaman patients. This system usually requires a humanitarian actor to liaise with the Rakhine State Health Department to take patients to the Sittwe General Hospital. The process is cumbersome, bureaucratic and slow. The patient may then require hours of travel.[1177] To secure an emergency medical referral, a local township medical officer must first certify the need. The patient, supported by a humanitarian actor, must then get permission to travel, arrange transport, organize a police escort, and pay the associated costs.[1178] Even when all arrangements are in place, ambulances reportedly may refuse to go to Rohingya villages, camps or sites, and ultra-

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[1171] Ibid., para. 43.

[1172] Ministry of Health and Sports, *Myanmar - 2015-2016 Demographic and Health Survey - Key Findings* (2017).

[1173] See also: Advisory Commission on Rakhine State, *Towards a peaceful, fair and prosperous future for the people of Rakhine* (August 2017), p. 42.

[1174] DI-004.

[1175] DI-013.

[1176] DM-005.

[1177] V-047.

[1178] DM-005.

nationalist Rakhine groups sometimes prevent patients from reaching Sittwe General Hospital.[1179]

549. In central Rakhine, the Aung Mingalar ghetto in Sittwe town is located only a short distance away from Sittwe General Hospital. Mobile health clinics operated by international organizations visit on certain days of the week and can facilitate more rapid referrals. However, those requiring medical treatment outside those times, including those requiring emergency treatment, must first travel to a health centre at the Sittwe displacement camp to obtain a medical referral. If successful, they are then referred back to Sittwe General Hospital.[1180]

Adverse consequences

550. The movement restrictions and lengthy bureaucratic procedures have led to numerous undue delays in reaching medical facilities.[1181] Restrictions have been enforced strictly, even in the case of women in obstructed labour, infants needing emergency oxygen, people suffering from heart attacks, and people with severe disabilities. In some cases, the delays caused by these restrictions have been fatal.[1182] One researcher told the Mission: "Almost every Rohingya village in Rakhine State that I have visited has a story about someone who died due to not being able to receive medical care, and not being able to get transferred out".[1183]

Discrimination in health facilities

551. Even when they manage to access government health facilities, Rohingya in Rakhine State face discriminatory treatment, including further delays.[1184] Interviewees also reported having to pay bribes or higher fees to receive treatment. One interviewee from Maungdaw stated:

> *The treatment depends on the amount of money you have. If you pay more you will receive medicine and proper care. They charge more from Muslims than from the Rakhine.*[1185]

552. Rohingya must also pay additional costs such as a "guard fee" for medicine and for food, phone fees, as Rohingya are not allowed to use their own phones, and translator and "guardian" fees.[1186]

553. According to credible reports,[1187] both ethnic Rakhine and Muslim (Rohingya and Kaman) patients experience unacceptable behaviour from hospital staff in Sittwe General Hospital, including requests by nurses for bribes to receive "better communication". Patients also reported verbal abuse, inattention and, in some cases, physical abuse and medical neglect. However, according to further credible information,[1188] certain discriminatory practices at Sittwe General Hospital are only faced by Muslim patients. For example, they are placed in a small segregated ward of only 20 beds, under constant surveillance by security guards, and they can only leave under supervision. To be admitted to the hospital, a patient needs an accompanying "guardian". In the case of the Rohingya, this can only be a woman (supposedly for security concerns) and she must speak Myanmar language or Rakhine. As only very few Muslim women speak these languages, families

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[1179] K-076.12.

[1180] K-113.1.

[1181] K-076.12.

[1182] DI-013, K-076.12, K-113, DM-005, QM-005. It is very difficult to quantify the number of preventable deaths. Some humanitarian actors estimate that there have been hundreds of preventable deaths in central Rakhine since 2012 (DM-005).

[1183] K-120.

[1184] CI-061, CI-064, CI-078, CI-079, CI-080, CI-173, CI-174, DI-001, DI-002, DI-004, DI-038, DI-051.

[1185] CI-173.

[1186] K-113.1, K-120.

[1187] K-113.1.

[1188] K-113.1

must hire female translators to do this (which is an additional financial burden) or decide not to hire anyone, meaning that the patient is left on his or her own at the hospital.

554. In some instances, delays in treating Rohingya patients in health facilities have led to preventable deaths.[1189] A Rohingya NGO worker shared her experience at Buthidaung hospital:

> *One day, I went to Buthidaung hospital with an eight-year-old boy who was unconscious. In the registration room they said: "We have a lot of patients, we can't do anything for this boy now. Go and sit there. Why are you coming to ask us?" The nurses prioritised a Rakhine patient. I had to wait 30 minutes and the boy died. This happened to me with three patients in total. They were all children.*[1190]

555. Communication and language issues fuel pervasive and damaging misinformation and rumours regarding the treatment of Rohingya in government hospitals and facilities. Many Rohingya believe that, beyond neglect and discriminatory treatment, they actually face the danger of being killed by medical staff if they go to a hospital.[1191] One interviewee told the Mission that, following the 2012 violence, "The hospital people started killing Rohingyas".[1192] Belief in these rumours has resulted in people limiting or delaying seeking medical treatment, including in emergency situations. One researcher explained that "in many cases people were to die of preventable disease *as a result* of not seeking healthcare, because of a steadfast belief in the veracity of these rumours".[1193] The rumours are also fuelled by the simple fact that, given the delays in reaching medical facilities - because of restrictions on freedom of movement and other restrictions - patients often reach the hospital when they are already in critical condition.

(c) Restrictions on access to education

Legal framework and overview

556. The right to education is protected by article 26 UDHR, article 13 ICESCR and article 28 CRC. According to these provisions, primary education should be "compulsory and available free to all", secondary education should be "made generally available and accessible to all" and higher education should be "made equally accessible to all, on the basis of capacity". The right to education is an "empowerment right". It is "the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities".[1194]

557. One key element of the right to education is the prohibition against any form of discrimination. This prohibition "applies fully and immediately to all aspects of education and encompasses all international prohibited grounds of discrimination". The principle of non-discrimination extends to "all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status".[1195]

558. Through its discriminatory policies and practices, the Government of Myanmar violates the right to education of Rohingya children and youth at the primary, secondary and higher education levels. Rohingya interviewees repeatedly described to the Mission how they were denied equal access to education and the highly adverse impact this had on their lives:[1196]

[1189] CI-173, DI-038.

[1190] DI-038.

[1191] CI-073, CI-080, CI-089, CI-174, DI-009, DI-046, DI-053, DI-054.

[1192] CI-080.

[1193] K-120.

[1194] United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The right to education (Art. 13)*, 8 December 1999, E/C.12/1999/10, para. 1.

[1195] Ibid, para. 31 and 34. See also art. 2 CRC and art. 3(e) of the UNESCO Convention against Discrimination in Education.

[1196] BI-004, BI-018, CI-019, CI-062, CI-063, CI-065, CI-069, CI-072, CI-073, CI-078, CI-079, CI-080, CI-125, CI-173, DI-003, DI-004, DI-005, DI-007, DI-010, DI-013, DI-022, DI-025, DI-026, DI-034,

> *Because of the 2012 violence, the dream of my parents for education got shattered. My father and brother were teachers and look at me, I couldn't even study! Now when I meet educated people, I think, "Oh my God, I haven't even passed class 10". But I still have hope that one day if I can save a bit of money, I will restart my education because it is so important. The military backed Government snatched our life from us. They ruined the entire Rohingya community in the country.*[1197]

Discrimination at school in northern Rakhine

559. A large majority of children in northern Rakhine State have relied on government-run basic education schools for their education.[1198] Rohingya have faced severe discrimination in these schools. This includes the humiliating practice of seating Rohingya children at the back of the class, while ethnic Rakhine children sat at the front, or Rohingya and Rakhine students being placed in different classrooms.[1199] Many government-appointed teachers neglect Rohingya students and treat them differently from Rakhine students.[1200] Some actively undermine Rohingya students, with examples of them being called "Kalar", or being told that they are not Myanmar citizens or that they "do not have any country".[1201] One young Rohingya woman from Maungdaw shared her experience at school:

> *The only regret I have in my life is that no teacher ever considered me as their favourite student. You have no idea, what I was doing to try to get the attention of my teachers and learn like any other student. I obeyed. I behaved nicely. If they wrote anything on the black board, I would help to erase it afterwards. The teachers used to bring their lunch in a box. When I would see them, I would quickly offer to carry their lunch-boxes. Even after all this, they hardly checked my homework or classwork to see if I was learning properly. I always heard that teachers are nice and caring but this was not the case with me. I always completed my homework on time and wanted them to look at it but they would simply put a right or wrong sign on the paper without explaining anything. For the Rakhine students it was different, their homework was checked.*[1202]

560. Another barrier consistently highlighted by interviewees is language. Depending on the grade, classes in public schools are taught in Rakhine or Myanmar language, which many Rohingya students do not understand.[1203] Rohingya interviewees stated that their classes were irregular, with a high level of absenteeism by teachers, and that often they had little to do at school.[1204] One interviewee explained how the Rohingya students at his school were kept in a separate room and that the teacher would only greet them in the morning before spending the rest of the day with the ethnic Rakhine students. The Rohingya students were unable to communicate properly with the teacher.[1205]

561. After the 2012 violence, some schools closed. In 2015, it was assessed that the primary level teacher-student ratios were 83:1 in Buthidaung and 123:1 in Maungdaw, respectively more than double and triple the international benchmark and well above the reported target of 30:1 set out by the Ministry of Education of Myanmar.[1206] Government

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DI-038, DI-046, DI-047, DI-050, DI-052, DI-053, DI-073, DI-076, LI-055, LI-087, LI-092, LI-098, LI-101, LI-103, LI-116, LI-131, LI-135, QI-069.

[1197] DI-047.

[1198] PLAN and REACH, *Joint education sector needs assessment, north Rakhine State, Myanmar* (2015), p. 4.

[1199] BI-018, CI-173, DI-005, DI-026, DI-038, DI-050, DI-053.

[1200] CI-062.

[1201] CI-065, CI-069, CI-072, CI-078, CI-073.

[1202] DI-026.

[1203] DI-004, DI-010, DI-026, DI-038.

[1204] DI-005, DI-025, DI-052, LI-116.

[1205] DI-005.

[1206] PLAN and REACH, *Joint education sector needs assessment, north Rakhine State, Myanmar* (2015), p. 5. According to UNESCO: "In the absence of a global target on pupil-teacher ratios (PTR) in primary education, the most widely used international benchmark is 40:1." Education for All Global Monitoring Report and UNESCO Education Sector, "Policy Paper 19: The challenge of teacher teachers reportedly attended schools even less frequently, especially in Maungdaw and Buthidaung, supposedly due to security concerns. As a consequence, a parallel education system staffed by volunteers was started to teach Rohingya children in northern Rakhine.[1207]

Situation in central Rakhine

562. According to credible reports, in central Rakhine many Rohingya and Kaman children are prevented from attending the formal education system because of the combination of movement restrictions, the lack of schools, and the confinement of an estimated 60,000 displaced children. In displacement camps and sites, primary education is mainly accessible through "temporary learning centres" set up after the 2012 violence and supported by the United Nations and international organizations. These centres follow the government's curriculum. They are open to both displaced children and children from Muslim villages who do not have access to government schools. However, these centres are only primary school level, lack support from the Government, are under-resourced and lack qualified teachers.[1208]

563. Middle school and high school opportunities are even more limited for Muslim students in central Rakhine, and almost non-existent for those living outside Sittwe Township. There is only one high school for Rohingya and Kaman children in central Rakhine, located in Thet Kae Pyin in Sittwe Township. It provides schooling for approximately 3,500 students. At the high school level, there are reportedly only six teachers in total, with a ratio of 102 students per teacher. Out of the total of 57 teachers, it is reported that only five are government-appointed (all of whom are Kaman), with all the others being "volunteer teachers".[1209]

564. In 2018, the UNICEF spokesperson summarised the situation of Rohingya children with regards to access to education in central Rakhine as follows:

> *While the eyes of the world are on the situation in northern Rakhine and in Cox's Bazaar, over 60,000 Rohingya children remain almost forgotten, trapped in 23 camps in central Rakhine they were driven into by violence in 2012. (...) The movement restrictions are shrinking horizons for children in the camps – nowhere more so than in terms of education. (...) Rohingya children desperately need education if they are to have any kind of prospects for a better future. Temporary solutions need to be improved immediately and more durable arrangements providing children with access to formal education, provided by properly trained teachers and recognized by the education system, must be set in place quickly. Otherwise this generation's future prospects will be permanently damaged.*[1210]

Discrimination at university

565. Until 2012, a limited number of Rohingya could access higher education, mostly at Sittwe University. A very small minority – students from wealthy or prominent families – could travel to Yangon to study. Travel to Sittwe or Yangon remained a challenge because of the movement restrictions.[1211] As "non-citizens", Rohingya were not permitted to study certain "professional" subjects (including law, computer science, engineering and medicine). They were also not allowed to study beyond a bachelor's degree level.[1212]

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shortage and quality: Have we succeeded in getting enough quality teachers into classrooms?" (April 2015).

[1207] [illegible] and REACH, *Joint education sector needs assessment, north Rakhine State, Myanmar* (2015), p. [illegible] LI-116

[1208] QM-002, QM-005; K-113.2; UNICEF, *Briefing on the situation of children in Rakhine State* (January 2018).

[1209] QM-005, K-113.2.

[1210] UNICEF, *Briefing on the situation of children in Rakhine State* (January 2018).

[1211] CI-065, CI-069, CI-080, DI-004, LI-135.

[1212] CI-065, CI-069, CI-078, DI-003, DI-007, DI-013, DI-034, DI-073, DI-076, LI-135.

566. In some cases, Rohingya students were not given a certificate upon completion of their studies.[1213] One interviewee explained that, because Sittwe University refused to issue her a certificate upon completion of three years of zoology studies, she had to work as an office cleaner.[1214] Another interviewee said she had to bribe the university to obtain a certificate which did not correspond to the actual subject of her studies. Despite this, she explained the importance of receiving this document:

> *I finally received my certificate from university. That is the only thing I was hiding in my blouse when I left Myanmar by boat. In the boat, everyone was asking me why I cared so much about this piece of paper. My whole life had been devoted to my studies. This is the only piece of paper I cared about.*[1215]

567. Since 2012, Rohingya students have been unable to enrol at Sittwe University, due to unspecified "security concerns". In practice, this effectively denied them access to higher education.[1216] In 2017, the authorities put in place distance learning for Rohingya and Kaman students.[1217] However, only a small number of mainly Kaman students were reportedly enrolled in the programme, which is only limited to history and Myanmar language courses.[1218] The Mission views this initiative as totally inadequate in meeting Myanmar's obligations under international law, to provide access to higher education for Rohingya and Kaman students. The students need full access to all universities in Myanmar.

(d) Conclusion

568. In addition to, and often because of, the lack of legal status, severe movement restrictions, the Rohingya also face restrictions on access to food, livelihood, healthcare and education.

569. Rakhine State is one of the poorest states in Myanmar. All communities suffer from poverty, poor social services and scarcity of livelihood opportunities, despite it being fertile, relatively well-endowed with natural resources and strategically located.[1219] The extreme levels of malnutrition in Rakhine State, and in particular in northern Rakhine, must be seen in light of the policies and practices of the authorities. They are a consequence of the authorities' actions and omissions. The severe movement restrictions and other discriminatory policies, affecting Rohingya's access to land, forests, fishing grounds and markets, have a direct impact on their food security and health, threatening their right to life and ability to live in dignity and free from hunger. An already difficult situation has been further compounded by the waves of violence and security operations in Rakhine State, and the Government's strict restrictions on humanitarian assistance. The Government of Myanmar manifestly fails in its obligation to respect, protect and fulfil the right of Rohingya individuals to an adequate standard of living, including their right to food.

570. The same analysis applies in relation to access to healthcare. The Mission notes that all communities in Rakhine State suffer from low availability and quality of healthcare. However, the severe movement restrictions, the arbitrary and cumbersome procedures to access hospitals and health facilities, the additional fees and bribes they must pay, the discrimination faced in health facilities, and the language barriers, put adequate healthcare entirely out of reach for the Rohingya. They experience delays, forgo healthcare, or rely on alternative healthcare strategies, putting them at greater risk. The Government of Myanmar fails in its obligation to ensure access to health care that is available, accessible, acceptable, and of good quality. Such failure has undermined the dignity of the Rohingya, exposed

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[1213] CI-078, DI-050, DI-076; see also: A/HRC/28/72, para. 55.

[1214] DI-078.

[1215] DI-050.

[1216] CI-080, DI-026, DI-073, LI-135.

[1217] Ministry of Information, "Distance University students studying peacefully in Rakhine State" (12 November 2017).

[1218] Ibid.

[1219] Advisory Commission on Rakhine State, Final Report, *Towards a peaceful, fair and prosperous future for the people of Rakhine* (August 2017), p. 20.

them to unnecessary suffering, immediate and long-term health risks, and preventable deaths.[1220] In such instances it also amounts to a violation of the right to life and to physical and mental integrity.

571. Rohingya are also subjected to discrimination in education. Quality education is unattainable to them. The discrimination faced in primary and secondary schools, and the denial of access to higher education, amount to violations of the right to education. However, they are also powerful tools to ensure cross-generational marginalisation. The restrictions to access to education described above contribute to the slow erosion and weakening of the Rohingya community as a whole. As one interviewee told the Mission:

> *The Government didn't allow Muslims equal access to education. We were excluded, and with no education, you are side-lined. You are separated from the other citizens in a systematic way.*[1221]

572. What permeates all these restrictions is the blatant discrimination on ethnic or religious grounds, targeting the Rohingya in particular. It is the consequence of policies and practices established, condoned and/or left unaddressed by the State. The restrictions form part of a system of severe and institutionalised oppression, amounting to persecution, of the Rohingya, marginalising and excluding them.

4. Restrictions on humanitarian access

573. In various circumstances, the Government suspends or severely restricts humanitarian access to areas in Rakhine State that are in dire need of assistance, especially in Maungdaw, Buthidaung and Rathedaung. This happened after the 2012 violence as well as after the "clearance operations" in October 2016 and August 2017. Such restrictions have a serious adverse impact on the population, who are left without critical and lifesaving assistance, including access to food and health services.[1222]

574. According to credible reports, restrictions on humanitarian access to northern Rakhine were tightened in June and July of 2017, even before the attacks on 25 August 2017 and subsequent "clearance operations". Following the appointment of a new Security Minister, some organizations were denied travel authorizations. Furthermore, following the publication of a July 2017 World Food Programme (WFP) assessment on food insecurity in northern Rakhine State, the Government circulated a letter addressed to international non-governmental organizations banning such assessments.[1223] The alleged discovery by the authorities of WFP food assistance in a supposed ARSA training camp on 30 July was used as a further reason to justify restrictions. An official statement stated that the "terrorists" were using WFP support for IDPs.[1224] It was later reported that these biscuits had actually not been distributed directly by WFP.[1225]

575. After 25 August 2017, all humanitarian access to northern Rakhine was suspended. The Government also accused some staff members of international non-governmental organizations of participating in the ARSA attacks, while repeating allegations related to the WFP food rations, which reportedly caused a large number of humanitarian aid workers to leave the area.[1226] Access then slowly resumed. The Government initially only granted

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[1220] CI-063, CI-064, CI-073, CI-080, CI-089, CI-090, CI-092, CI-173, DI-002, DI-004, DI-054, DI-073; K-076.12.

[1221] DI-025.

[1222] K-069.1, K-069.7.

[1223] K-069.13.

[1224] Information Committee, "Commodities found close to the suspicious huts built to shelter the extremist terrorists" (Facebook post, 31 July 2017), available at: https://www.facebook.com/InfomationCommittee/posts/773457006160741.

[1225] K-069.13.

[1226] Information Committee, "State Counsellor Office Information Committee's Statement regarding Extremist Terrorists" (Facebook post, 27 August 2017), available at: https://www.facebook.com/InfomationCommittee/posts/state-counsellor-office-information-committees-statement-regarding-extremist-ter/786270838212691/.

access to northern Rakhine to the Red Cross Movement[1227] in September 2017, and two months later to WFP. Beyond these two organizations, the Government reportedly selected a few other international organizations to whom it granted limited access, but none of them had experience working in northern Rakhine before August 2017.[1228] One humanitarian actor told the Mission:

> *Some other organizations have permission to operate in northern Rakhine, but are not provided with travel authorisations. This appears to be a deliberate attempt by the authorities to appear to be giving access, but in reality denying it.*[1229]

576. As of August 2018, the majority of humanitarian organizations that were active in northern Rakhine State before August 2017 have not been allowed to resume their field activities in the area.[1230] Even when granted access, humanitarian organizations are constrained in their work by restrictive procedures, including the short validity of their travel authorisations. There has been no comprehensive assessment of humanitarian needs in northern Rakhine State. Yet, it is beyond question that the current partial access is wholly inadequate to meet all the needs.

577. In central Rakhine, humanitarian agencies need prior authorisation to visit the camps and other displacement sites. They face questions about the purpose of their visit and are required to submit detailed movement plans. Vehicles entering Sittwe rural camps are stopped at the entry of the camps and asked to provide the necessary authorisations. Access for humanitarian agencies may be restricted without notice.

578. In February 2018, the Emergency Coordination Committee[1231] reportedly gave the following stringent instructions to international actors:[1232]

- Programmatic needs assessments: A requirement to obtain permission from the Ethics Committee of the Ministry of Foreign Affairs – which can take up to six months – to carry out assessments, particularly those used in new areas or for publication. In the case of surveys or reviews, the applicable questionnaires must be shared with the relevant line Ministry in advance.

- Memorandums of understanding (MoU): A requirement to include all activities to be undertaken by the organization in the MoU, including details at the village level. Organizations may be required to prove that they deliver equal assistance to ethnic Rakhine and Muslims, regardless of the actual needs of each community. If this is not met, the organization risks expulsion.

- Travel authorisations: A requirement to submit requests two weeks in advance for any given two-week period.

579. These instructions are of serious concern. Those related to needs assessment and travel authorisations severely curtail the ability of international organizations to undertake their work effectively and may lead to self-censorship on assessments to be shared publicly. Any requirement that humanitarian assistance be delivered on the basis of ethnicity or other factors apart from humanitarian need could contravene the humanitarian principle of impartiality.

5. Restrictions affecting private life

580. Beyond the arbitrary denial of legal status, the severe movement restrictions, and the denial of access to livelihood, health and education, Rohingya face other discriminatory

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[1227] The ICRC, IFRC and Myanmar Red Cross work together on their response in northern Rakhine and collectively refer to themselves as the "Red Cross Movement".

[1228] QM-005.

[1229] Ibid.

[1230] K-069.7.

[1231] The Emergency Coordination Committee is a body comprised of government representatives, ethnic Rakhine elders, civil society and humanitarian organizations. It vets and monitors the activities of international organizations. K-069.11; V-169, V-345.

[1232] K-113.4.

policies and practices, tightly controlling almost every aspect of their private lives. They include restrictions related to marriage, the number and "spacing" of children, and the building and repair of houses.

581. Most of these policies are based on administrative instructions issued by bodies such as the Border Area Immigration Control Headquarters (NaSaKa) or the Immigration and National Registration Department (INRD), and by township and district officials, primarily in northern Rakhine State. These are commonly known as "local orders". In 2008, the NaSaKa issued an instruction called "Regional order and processes for controlling Bengali population". It circulated regional orders first issued in 1993 and 2008 and added specific instructions to control the Rohingya, including in the following areas:

- population control
- "spot checking" related to household registration
- moving in and out of a household list
- taking family pictures for the household list
- marriage permissions
- birth and death.

582. Many restrictions appear to stem from these documents or similar instructions issued later. According to credible reports, after the disbandment of the NaSaKa in July 2013, Rohingya in northern Rakhine State described a temporary easing in their implementation. However, by early 2014, the Border Guard Police (BGP), the Committee for Prevention of Illegal Immigration of Foreigners (MaKhaPa) and township authorities had resumed many of the practices.[1233] On 13 August 2018, the Union Government issued an announcement abolishing eight local orders mainly targeting the Rohingya, including six issued by the NaSaKa.[1234] The Mission welcomes this positive step by the Union Government, although the extent to which this announcement will be implemented on the ground remains to be seen. The information below reflects the situation prior to August 2018.

(a) Restrictions related to household lists

583. Every household in Myanmar is required to have an up-to-date "household list" of its permanent residents. Since the expiration of TRCs on 31 March 2015,[1235] household lists have been the only form of identification for many Rohingya. The document is necessary for administrative procedures, including NVC-applications and marriage or travel permissions.

584. Household lists are issued and updated by the Ministry of Immigration and Population and the Ministry of Home Affairs.[1236] Births, deaths and marriages must be reported. Unlike in the rest of the country, the authorities in northern Rakhine State conduct yearly inspections of Rohingya households to "update" their household list. The stated purpose is to delete the names of those who left or are deceased, and to add new-borns. Although updating the list is a civilian administrative procedure, in northern Rakhine it is

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[1233] K-063.13.

[1234] Announcement 88/2018 by the Union Government of Myanmar (13 August 2018). The announcement abolished six orders issued by the NaSaKa: (a) the order to systematize the marriage permission, (b) the permission for marriage, (c) the issue on the divorce permission of Bengali people, (d) the issue of recording those who are of another race and are not ethnic people, by their father's name in the household list, (e) the issue of trying to create a separate household for Bengali people, (f) the issue of prohibiting those with Kalar names to also have a Myanmar name. The announcement also abolished two orders issued by the Directorate of People's militia and Border Area Units, Ministry of Defence: (a) the issue of enlisting the illegally-born Bengali babies in the household list, (b) the permission on marriage of Bengali people.

[1235] See this chapter, section B.1.c: Denial of citizenship.

[1236] Household lists are issued by the Immigration and National Identification Headquarters, which is jointly maintained by the General Administration Department, a branch under the military-controlled Ministry of Home Affairs, and the Ministry of Labour, Immigration and Population.

jointly conducted with and overseen by security forces. Since 2015 this has been undertaken by the BGP and MaKhaPa.[1237] The annual inspections are carried out in a discriminatory manner, targeting the Rohingya in northern Rakhine and providing the authorities unfettered power to add or remove individuals from the list, with no recourse to appeal. Inspections are often accompanied by intimidation, coercion, arbitrary arrests and random deletions from the list.[1238]

585. The process includes taking photographs of the permanent residents of a household. Family members often have to carry a card representing their "serial number" on the household list. According to the rules annexed to the regional order issued by the NaSaKa in 2008, if there is any suspicion of a child being "substituted" to mislead the inspectors, the mother will "be made to breastfeed the child", or the children "will be questioned separately".[1239] This violates the right to privacy of the mother and may constitute cruel or degrading treatment. It is certainly not in the best interest of the child.

586. The authorities often conduct checks during the night, waking up the household.[1240] One interviewee explained how armed NaSaKa officers would visit her house in the early hours, forcing everyone to wake up, including young children: "If there was anyone in the house that was not on the list, they would be taken away".[1241] During the inspections, Rohingya have to pay arbitrary amounts to get names removed or added to the list.[1242] The experience of one interviewee from Maungdaw demonstrates the arbitrariness and extortion:

> *When immigration officers came to update our household list, my wife had to pay 10,000 Kyat because I had left. Previously, I paid 10,000 Kyat for the inclusion of each of my first four children. For my youngest, I had to pay 30,000 Kyat. Following my departure, whenever the military or the NaSaKa came to my house, they asked for money. So my family joined me in Malaysia.*[1243]

587. According to credible reports, Rohingya who are not at home during the updating exercise may be removed from the list. Additionally, punitive removal of persons allegedly associated with the 2012 violence have reportedly taken place. Once deleted, a person is extremely vulnerable. Effectively denied proof of residence, they face heightened risks of arrest and conviction for immigration offences.[1244]

588. A household list updating exercise took place between December 2016 and January 2017, during the "area clearance operations" that followed the 9 October 2016 ARSA attacks. This was earlier in the year than usual. In southern Maungdaw, the displaced were reportedly deleted from the list. Some of those who were absent were reportedly recorded on a separate list as "on travel" or "missing".[1245] Additionally, 1,900 buildings were identified as illegal and marked for demolition.

(b) Restrictions related to marriage and children

589. Rohingya in northern Rakhine have faced targeted and discriminatory restrictions related to marriage and birth for many years. These have been implemented by the General Administration Department as well as by law enforcement officials. To officially register a marriage, Rohingya have to undergo a complex and lengthy procedure which is arbitrary

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[1237] K-063.12.

[1238] CI-061, CI-062, CI-065, CI-073, CI-080, CI-082, CI-090, CI-092, CI-094, DI-001, DI-009, DI-013, DI-025, DI-026, DI-053.

[1239] NaSaKa, *Regional Order on Processes for Controlling Bengali Population* (11 February 2008), Addendum on "Drawing maps, making a record of buildings, and reviewing household registrations"; K-076.

[1240] CI-090, DI-013, DI-026.

[1241] DI-026.

[1242] CI-061, CI-062, CI-065, CI-072, CI-073, CI-079, CI-080, CI-082, CI-090, CI-092, CI-094, DI-001, DI-025.

[1243] CI-073.

[1244] V-047.

[1245] K-063.12

and subject to extortion. They must also comply with discriminatory requirements related to the number and spacing of children. Contravention is subject to criminal penalties. These procedures have not applied elsewhere in Rakhine State. However, in 2015, the local provisions were supplemented by national legislation directed towards "non-Buddhists" generally in Myanmar.

Restrictions on marriages

590. A regional order from the Township Peace and Development Council in 2005 aimed at controlling marriages in Maungdaw Township. It referred to a "dense" population, an "extremely high" birth rate, and the risk that there is "likely to be starvation".[1246] While most of the order is drafted in general terms, section 1(c) is applicable only to people who marry "as per the Islamic religion". It requires permission to marry from the Council, following a check by the village level council and the NaSaKa Sector Command. Those who receive permission to marry must limit the number of children. Widows and widowers can only apply for permission to remarry after three years. The order states that "effective actions" will be taken against those who marry or divorce in violation of the order. In 2008, the NaSaKa outlined the application requirements in more detail, including a requirement for men to submit a photograph without a beard (except for religious persons, known as "Mawlawis") and specific punishments under the Penal Code for contravening the order.[1247]

591. A further NaSaKa local order from August 2009 contains similar provisions, prescribing that violation of the rules can lead to lengthy prison sentences. The order sets out similarly circuitous procedures for obtaining permission to marry, including an interview and at least three witnesses. The application forms had the word "Islam" pre-printed on it, clearly demonstrating discriminatory intent.

592. According to credible reports, harassment and humiliation were frequent during this procedure. Couples could be asked intrusive personal questions about their relationship. Some couples were reportedly forced to hold hands or make other physical displays of affection. Male applicants were sometimes requested to shave their beards and female applicants to remove their *hijab* or headscarf. Women were reportedly sometimes required to prove they were not already pregnant by taking a pregnancy test at a government clinic, showing their stomach to male officers, or having them touch their stomach.[1248] These practices constitute cruel, inhuman or degrading treatment. Moreover, being particularly aimed at females, they also discriminate based on sex. They violate Myanmar's obligations under article 16(1)(a) of the Convention on the Elimination of All Forms of Discrimination against Women "to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage".

593. The marriage authorisation procedure applicable to the Rohingya is reported to have caused delays of up to two years in obtaining permission and payment of exorbitant fees. Couples who did not obtain official marriage permission also risked criminal punishment, including fines. In addition, their children risked exclusion from the household list.[1249]

594. Because of the delays and the costs, couples often only married religiously, without first applying for a certificate, risking the consequences. One interviewee from Buthidaung explained how his sister married and had a child before receiving official permission. She had to hide when the police were searching for her.[1250] Another interviewee spoke of the bribes associated with the process, and potential consequences of not obtaining permission:

[1246] Peace and Development Council of Maungdaw Township, *Regional Order 1/2005* (1 May 2005), on file with the Mission; K-076.

[1247] NaSaKa, *Regional Order on Processes for Controlling Bengali Population* (11 February 2008), Addendum on "Population control activities" and "Requirements for Bengalis who apply for permission to marry", on file with the Mission; K-076.

[1248] K-076.15.

[1249] CI-061, CI-062, CI-064, CI-065, CI-070, CI-072, CI-073, CI-079, CI-082, CI-090, CI-092, CI-094, CI-173, DI-001, DI-004, DI-009; K-063.15, K-076.15.

[1250] DI-009.

> *Although my elder brother paid 100,000 Kyat to the NaSaKa for a marriage permission letter, it wasn't issued, and he proceeded to get married religiously. One day, the NaSaKa went to his house and found his wife pregnant. They asked for the official marriage document, but they didn't have one. The NaSaKa arrested my brother and he was detained in Buthidaung jail for five years.*[1251]

595. Although not uniformly enforced, credible reports indicate that the practice of restricting the marriages of Rohingya in northern Rakhine continued after the disbandment of the NaSaKa in 2013. It was enforced by the BGP, MaKaPha and the General Administration Department.[1252] On 28 April 2016, the BGP in Maungdaw issued a new instruction on marriage permission. Although it is not known whether this new instruction was applied throughout northern Rakhine State, it is alleged that similar instructions were issued in various BGP sectors across Maungdaw and Buthidaung. The instruction on "marriage related matters of Bengali races" imposes additional requirements for marriage permission. The introduction states:

> *The population density (...) is greater than international standard. For that reason, in our sector jurisdiction, the movement of the Bengali races and population increasing rate has been controlled through the household list updating exercise.*[1253]

Restrictions on number and spacing of children

596. Regional Order 1/2005 of the Maungdaw Township Peace and Development Council states that those who have permission to marry must "limit" the number of children they have, without giving further details. However, as part of the marriage permission procedure, Rohingya couples were made to promise not to have more than two children and to use contraception.[1254]

597. In May 2013, the authorities in Rakhine State announced the reinforcement of the rule limiting to two the permissible number of children in Maungdaw and Buthidaung.[1255] The spokesperson of the Rakhine State Government reportedly recognized that the two-child policy was only applicable to the Rohingya:

> *Regarding family planning, they [the Rohingya] can only get two children. (...) The rule is only for certain groups (...). For Buddhist people, we don't need that rule, because Buddhist people only have one wife. It is being implemented to control the population growth, because it is becoming too crowded there.*[1256]

598. According to credible reports, the Union Immigration Minister also confirmed the existence of this policy in 2013 but stated that it did not come from either the Union or State government. He highlighted that it would "benefit Bengali women". At the time, Daw Aung San Suu Kyi had reportedly called the policy "discriminatory," stating that it was "not in line with human rights".[1257]

Adverse consequences

599. According to credible reports, the highly cumbersome and arbitrary marriage permission process, and risks associated with it, has led many Rohingya to leave Myanmar. Women reportedly resorted to unsafe abortions for fear of contravening local orders and associated criminal penalties. Women were often afraid to seek healthcare because they feared repercussions for having had an illegal abortion, or for living with someone without marriage permission. This has led to preventable deaths of mothers and infants and long-term health impacts for women who survive.[1258]

[1251] CI-064.
[1252] K-063.15.
[1253] K-076.
[1254] K-063.15, K-076.15.
[1255] K-063.16.
[1256] The Irrawaddy, "Govt sets two-child limit for Rohingyas in northern Arakan" (20 May 2013).
[1257] Reuters, "Myanmar minister backs two-child policy for Rohingya minority" (11 June 2013).
[1258] K-076.15.

"Race and religion" laws

600. In June 2013, the monk Ashin Wirathu called for a law on inter-religious marriage. This was subsequently expanded to a package of four bills to "safeguard nationality and religion". The MaBaTha submitted a petition to President Thein Sein supporting this proposal, with more than 1.3 million signatures. Despite concerns raised about compliance with human rights standards, including by United Nations experts[1259], these four bills became law between May and August 2015. The laws make reference to "non-Buddhists", not explicitly naming Rohingya or Muslims. However, given rhetoric in the lead-up to their adoption, the laws clearly had a discriminatory intent against the Rohingya. They were built on a number of prevailing stereotypes, including that Rohingya are polygamous and have a high birth rate, and that Buddhist women need protection from conversion to Islam and marriage to Muslims.

- **Buddhist Women's Special Marriage Law**: imposes disproportionate penalties and gender discriminatory barriers on non-Buddhist men; restricts the rights of non-Buddhist husbands of Buddhist wives, including denying them custody of children in the case of dissolution of marriage or divorce; discriminates against women by placing a number of restrictions only on Buddhist women who wish to marry outside their faith; and provides protection against some forms of domestic violence only for Buddhist women marrying outside of their religion.
- **The Population Control Healthcare Law**: adopts a coercive and selective approach to realising the stated goals of poverty alleviation and improvement of living standards; lacks essential safeguards to ensure freedom from discrimination; and allows township groups to "organize"[1260] couples to practice 36-month birth spacing, raising concerns of coercion.
- **Religious Conversion Law**: establishes a cumbersome and state-regulated system for changing religion, requiring state approval following registration and interview; prevents children from changing their religion.
- **Monogamy Law**: bans polygamy in accordance with international human rights requirements but some provisions adopt a restrictive and discriminatory approach to marriage regulation; makes references to "non-Buddhist persons"; does not prohibit other discriminatory forms of marriage, including early and forced marriages, practised by other population groups.

601. The laws remain in force, but little information is available on their implementation. Some reports indicate that, while the first case brought under the Monogamy law was against a Muslim,[1261] many of the following cases were predominantly against Buddhists reported for extramarital affairs.[1262]

(c) Restrictions related to repairs of houses

602. The applicable legal framework in relation to construction and repairs of buildings is unclear. The Rohingya face many difficulties accessing administrative procedures in this regard, including applications for permits. The informal authorisation of construction and repair of buildings is facilitated by unofficial payments and bribes. These sums are paid to the General Administration Department and the Border Guard Police (and formerly the NaSaKa) to permit Rohingya to construct or repair their houses, especially in rural areas.[1263] The authorisation offers no security and is subject to demands for bribes. Those who do not comply, or who construct without authorisation, risk arrest. One interviewee stated:

[1259] MMR 4/2014, available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=22569 and 11 May 2015; MMR 5/2015 available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=20241.

[1260] Vague term used in the law.

[1261] A/70/412, para. 76.

[1262] V-244.

[1263] CI-073, CI-090, DI-010, DI-038, DI-054.

> *I had all the necessary permission to build a new house. On the very first day of the construction, about five police officers came to the site with the village administrator. They asked to show the documents related to the construction and we did. The police said there was no signature on the documents, although I knew the documents were 100 per cent correct. I could not protest, otherwise they would have arrested me. I offered them chickens worth 10,000 Kyat and 2kg of rice. They demanded 100,000 Kyat instead. It took me two months to gather this amount.*[1264]

603. In addition, Rohingya face restrictions on construction and repairs related to the implementation of local orders. For example, a couple without official permission to marry cannot initiate a new household list, which is necessary to obtain permission to construct.[1265]

604. In September 2016, the State Security Minister of Rakhine announced that buildings constructed without the required permissions would be demolished. Implementation began in November 2016, during the "clearance operation" undertaken by the Tatmadaw. As of January 2017, credible reports indicate that a total of 1,082 buildings had been demolished out of 1,984 which had been identified for demolition. This also included mosques and madrassahs.[1266] As a consequence, a total of 4,480 people were reportedly forcibly evicted. It is unclear how the procedure for the designation of buildings constructed without permission was conducted and if the process also assessed homes and structures belonging to and occupied by other ethnic groups.

(d) Conclusion

605. The control of the Rohingya does not stop at denial of legal status and severe restrictions on movement and access to food, health and education. It also affects their private life, including through marriage restrictions, birth spacing policies, and undue control on the building and repair of homes and religious edifices. Cumbersome and opaque procedures are put in place for every aspect of life, generally applied arbitrarily and requiring the payment of fees and bribes.

606. These policies and practices have emerged in a context of rhetoric labelling Rohingya as "illegal immigrants", having "incontrollable birth-rates". The presence of Rohingya is seen as a threat, not only to the local Buddhist communities, but also to the nation and its Buddhist character as a whole.[1267] The discriminatory and persecutory intent of such policies is apparent. They also violate a range of human rights, including the right to privacy and family life and freedom from cruel, inhuman and degrading treatment.

6. Oppression through arbitrary arrest and detention

607. The Mission further found a pattern of widespread and systematic arbitrary detention of Rohingya across Rakhine State, but particularly in the northern townships. These arrests are discriminatory, with the Rohingya systematically targeted. The arrests are perpetrated by different law enforcement agencies, including the BGP and previously the NaSaKa, as well as other security forces, including the Tatmadaw. Arrests generally occur during night raids on villages, in houses or shops, at checkpoints or during house searches or household list verifications.[1268]

608. The levels of arbitrary arrest and detention throughout the period under review have been extremely high, with significant spikes during periods of heightened tension, such as the 2012 violence and the post-October 2016 security operations. Arrests were random, not based on evidence or a warrant, often with male villagers arrested during a "sweep" of the village. For example, following the June 2012 violence, credible reports suggest that more

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[1264] CI-090.

[1265] According to Addendum 2 of the 2008 NaSaKa regional order applicable only to the Rohingya, "action must be taken against people who fix, expand or build a house without a permit".

[1266] K-063.17.

[1267] See Chapter III, section B.2: Place of Buddhism in society.

[1268] K-076.46.

than 1,000 persons were arrested and detained in northern Rakhine State[1269]. Such mass arrests may constitute collective punishment of the Rohingya population.

609. These patterns are fully in line with reports of the Special Rapporteurs on the situation of human rights in Myanmar, the United Nations High Commissioner for Human Rights [1270] and others, who have invariably expressed concern about the issue. Other reports also suggest that arbitrary arrest and detention has been a routine aspect of the life of the Rohingya throughout the period under review and prior. One detailed study published in 2010 stated, "The arbitrary detention of the Rohingyas is so prevalent as to be considered to have reached industrial levels".[1271] Another study of a third of village tracts in Maungdaw over a three month period in 2014 found an average of nearly 90 arrests per month.[1272] A second study in 2015 in northern Rakhine State found an average of approximately 330 arrests per month[1273].

610. A primary motivating factor of perpetrators is extortion. Nearly all such incidents corroborated by the Mission involved either the payment of bribes to secure release, or continued detention due to the non-payment of bribes[1274]. The practice was commonplace, implemented by the NaSaKa, the BGP, the Myanmar Police Force, the LaWaKa, SaYaPa (Military Intelligence) and the Tatmadaw. The amount of the bribes varied and sometimes forced villagers to borrow large sums from neighbours. The economic impact has been significant. One interviewee from Maungdaw Township stated:

> *When my father was arrested, my mother used to pay the military to get him released. He would stay in detention for various lengths of time, depending on how fast my mother would pay. The amount would vary greatly, and my mother would borrow money from others to pay the bribe. Then, my father had to work to pay back this money. They would arrest him without giving any reason. When we asked why he was arrested, the response was that we were Muslims, we were "Kalar".*[1275]

611. In some instances the arrests were in relation to vague "offences", including travel to Bangladesh, possessing a mobile phone or Bangladeshi SIM card, or the collection of firewood[1276]. One interviewee informed the Mission that his brother was detained for being in possession of a mobile phone. His family could not pay the bribe asked by the police and he remained in detention for seven months.[1277] It has also been suggested that persons who were more affluent were targeted, as they could pay higher bribes.

612. Arbitrary arrest and detention were frequently associated with torture and ill-treatment.[1278] One interviewee described how he was arbitrarily detained in 2011, seemingly in relation to his involvement in an appeal against the confiscation of the village graveyard by the NaSaKa. He was repeatedly beaten with a large wooden stick.[1279] Deaths in custody following arbitrary detention were also reported.[1280]

7. Other forms of oppression

613. Rohingya face several other forms of oppression at the hands of the Myanmar authorities, in particular the security forces. These include forced labour, confiscation of property, extortion and sexual and gender-based violence. These are not necessarily unique to the Rohingya. As described above, they are also faced to a large extent by the ethnic

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[1269] K-076.46.

[1270] For example, A/HR/32/18.

[1271] Irish Centre for Human Rights, *Crimes against Humanity in Western Burma: The Situation of the Rohingyas* (2010).

[1272] V-246.

[1273] K-076.

[1274] CI-064, CI-065, CI-082, CI-089, DI-009, DI-013, DI-020, DI-025, DI-054, DI-056.

[1275] DI-009.

[1276] CI-064, DI-025, DI-054.

[1277] DI-054.

[1278] CI-064, CI-065, CI-082, CI-089, DI-025, DI-056.

[1279] CI-065.

[1280] K-076.46; V-245.

Rakhine and probably other groups as well. However, in the case of the Rohingya, these are added on to all other forms of oppression and persecution described above.

(a) Forced or compulsory labour

614. As with the ethnic Rakhine population, forced or compulsory labour has been a common experience for many Rohingya in Rakhine State. The Mission corroborated cases from Maungdaw and Buthidaung Townships in northern Rakhine State,[1281] although it is likely that Rohingya in central and southern regions have had similar experiences. Forced labour has been prevalent for many years, with reports that more than two-thirds of Rohingya families in the two townships had to provide forced labour prior to 2011.[1282] The Mission found incidents of forced labour in 2012 and 2013, although credible information indicates that the practice continued in northern Rakhine until 2016, and possibly beyond, albeit at a reduced rate.[1283] Perpetrators of forced labour have primarily been the Tatmadaw and the NaSaKa (until its disbandment in 2013).

615. The established patterns are very similar to those outlined in relation to the ethnic Rakhine, including in terms of the types of forced labour (for example, portering, construction work, farming, maintenance of security camps), the frequency of the work, the general ill-treatment suffered in the context of such labour (including beatings and verbal abuse), and the economic impact on the individual and their families. In some cases there appears to have been an option to avoid forced labour, through the payment of bribes, or through paying other villagers to perform the task on their behalf.[1284]

(b) Confiscation and extortion

616. Like the ethnic Rakhine, the Rohingya suffer from arbitrary confiscation of livestock and goods by security forces, usually with total impunity.[1285] One interviewee explained:

> *Looting of vegetables and domestic animals, by the military, the NaSaKa and the police was common. They used to take anything they wanted from the land, without paying. They took also commodities from the villagers whenever they thought they might need them.*[1286]

617. Already extremely vulnerable because of their lack of legal status and other forms of systemic oppression, the Rohingya additionally suffer from extortion at the hands of security forces and other authorities. It affects many aspects of their lives.[1287] This includes having to pay to obtain permission to move from one place to another, stay overnight in another household, and pass checkpoints.[1288] They also have to make payments or pay bribes to obtain marriage permissions, have a child included on the household list, have a family member deleted from the list,[1289] obtain the necessary authorisations to build or repair their homes, bring back wood or bamboo from the forest,[1290] as well as avoid or be

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[1281] CI-062, CI-072, CI-079, CI-089, CI-092, CI-093, CI-094, CI-173, DI-001, DI-002, DI-005.

[1282] K-063.

[1283] K-063.

[1284] CI-080, CI-089, DI-047.

[1285] CI-062, CI-064, CI-065, CI-073, DI-013, DI-025, DI-038.

[1286] CI-073.

[1287] CI-061, CI-062, CI-063, CI-064, CI-065, CI-069, CI-070, CI-072, CI-073, CI-076, CI-079, CI-080, CI-082, CI-085, CI-089, CI-090, CI-092, CI-094, CI-098, CI-100, CI-133, CI-134, CI-136, CI-144, CI-146, CI-149, CI-162, CI-173, CI-174, CI-175, CI-176, CI-179, CI-181, CI-183, CI-186, CI-189, CI-190, CI-192, CI-194, DI-001, DI-003, DI-004, DI-008, DI-010, DI-013, DI-020, DI-025, DI-026, DI-037, DI-038, DI-046, DI-047, DI-050, DI-054, DI-076, LI-105, ZI-002.

[1288] CI-061, CI-063, CI-064, CI-065, CI-069, CI-070, CI-072, CI-073, CI-079, CI-080, CI-082, CI-090, CI-174, DI-001, DI-003, DI-020, DI-025, LI-105.

[1289] CI-061, CI-062, CI-064, CI-065, CI-070, CI-072, CI-073, CI-076, CI-079, CI-082, CI-089, CI-092, CI-173, DI-001, DI-004, DI-025.

[1290] CI-061, CI-073, CI-079, CI-082, CI-090, DI-038, DI-10.

released from arbitrary detention.[1291] An interviewee from Maungdaw, explained how Tatmadaw soldiers would come to the market or village and simply arrest whomever they found, take them to the police station, and then ask money from the family for their release.[1292] An interviewee from Buthidaung also shared the following account:

> *If we wanted to change anything in the house, we had to pay. Our family had to change two bamboo poles in the railing of our house. When the NaSaKa officers heard the sound of repair, they came and asked for money.*[1293]

618. Sometimes payments were made, but the issue remained unresolved. One interviewee explained that his brother paid 100,000 Kyat to the NaSaKa to obtain his marriage authorisation but it was not issued. He was later detained for five years for not having a permit. [1294]Another interviewee explained how he was detained at a police station and the police officer said he would be released if he paid a large bribe. However, although he paid, he was not released.[1295]

619. The amounts extracted from the Rohingya are exorbitant compared to their revenue. It adversely affects their right to an adequate standard of living, including to food and livelihood, and to health and dignity. It often leads to unbreakable cycles of debt, household impoverishment and desperate coping mechanisms:

> *The police said that if we couldn't give them 350,000 Kyat, I would be put in prison. My mother had to arrange the money. She sold our land to ensure my release.*[1296]

(c) Sexual and gender-based violence

620. There are credible and consistent reports of sexual and gender-based violence against Rohingya women and girls by members of the Tatmadaw, the police and the NaSaKa.[1297] The experience shared by one interviewee illustrates the prevalence of such acts, even outside the periods of extreme violence in 2012, 2016 and 2017:

> *I was taken to a large government building next to the high school in Maungdaw. There were many police officers. I was taken to a room where there were already about 10 other Rohingya women. Men in uniform took away women in groups of four and then I heard screaming. I think they were being raped. I heard girls saying, "Oh Allah, save me" and "please don't rape me". Other women were giving massages to men from various security forces, not just the police. It was humiliating. If a girl was not massaging, she was hit by the police. It was very weird because the place was like an office but all of this was happening there. I saw girls with bite marks on their cheeks, and one fully naked girl running away. I managed to escape through a very small hole*[1298].

621. This is consistent with other credible reports published throughout the years. For example, a report of the United Nations Secretary-General on conflict-related sexual violence noted in 2012 that rape was condoned by military commanders.[1299] Examples of reported sexual violence include the rape of 13 Rohingya girls and women by NaSaKa forces in northern Maungdaw Township on 20 February 2013; the gang rape of a 16-year old Rohingya girl by police in early 2014; 14 cases of gang rape and sexual assault between

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[1291] CI-062, CI-065, CI-069, CI-072, CI-073, CI-082, CI-090, CI-092, CI-094, CI-100, CI-133, CI-134, CI-136, CI-144, CI-146, CI-149, CI-179, CI-181, CI-183, CI-186, CI-189, CI-190, DI-010, DI-020, DI-025, DI-026, DI-037, DI-038, DI-046, DI-050, ZI-002.

[1292] DI-025.

[1293] DI-010.

[1294] CI-064.

[1295] DI-037.

[1296] DI-025.

[1297] CI-074, CI-077, CI-174, DI-038, DI-048, DI-050.

[1298] DI-048.

[1299] A/66/657*–S/2012/33*.

January and June 2014;[1300] and the rape of a 10-year old girl by the military in early 2015.[1301]

8. Conclusion

622. The level of oppression faced by the Rohingya is hard to fathom. Cumulatively all the rules, regulations, orders and practices laid out in this section have made life for the Rohingya in Rakhine State slowly but steadily unbearable. Rights were eroded and removed, in a process of marginalisation, exclusion and "othering". Layers of discrimination and ill-treatment have been added. This occurred in the context of hateful and divisive rhetoric targeting the Rohingya on the basis of their ethnicity, religion and status. The multiple elements of oppression are based on State-sanctioned policies and practices and occur in the context of State-sanctioned discriminatory rhetoric. The Mission concludes that this severe, systemic and institutionalised oppression, from birth to death, amounts to persecution.

623. This persecution has put the Rohingya population in a situation of extreme vulnerability, undermining all aspects of their lives and eroding their living conditions and their coping mechanisms. The daily attacks on human dignity have created intolerable conditions, and have weakened individuals, families and communities, pushing them further into destitution and insecurity. It is this oppressive climate, and the fear and desperation resulting from it, that forced thousands of Rohingya to leave Rakhine State by boat in the years since 2012. It is also against this backdrop that the episodes of violence in 2012, 2016 and 2017 must be examined.

C. Violence in 2012

1. Emblematic incidents

624. Two events that took place on 28 May 2012, in Ramree Township, and on 3 June 2012, in Toungup Township, played a key role in the violence that erupted in Rakhine State on 8 June 2012. While the Mission did not investigate these two events, the following is a summary based on publicly available information, including accounts in the State-run newspaper The New Light of Myanmar, and the report of the Myanmar Government's "Inquiry Commission on Sectarian Violence in Rakhine State" (the Rakhine Inquiry Commission).

625. On 28 May 2012, Ma Thida Htwe, a 27-year-old Buddhist woman, was killed in the Kyauk Ni Maw village tract of Ramree Township in the south of Rakhine State. On 5 June 2012, The New Light of Myanmar reported the case as murder and rape. It published the names of the three suspects, along with a mention of their origin as being "Bengali/Islam".[1302] The three accused were subsequently prosecuted and sentenced to death. One of them reportedly hung himself while in custody on 9 June 2012.[1303] There appears to be no doubt about the murder of the woman but the Mission understands there are doubts about the rape allegation and the ethnic origin of the accused.[1304] In the following days and weeks, it was mainly the rape allegation, more than the murder, which was used to incite violence and hatred against the Rohingya. The Mission notes that other episodes of anti-Muslim violence in Myanmar followed rape allegations, some of which were later found to be untrue.[1305]

[1300] S/2015/203, p. 12

[1301] K-125

[1302] New Light of Myanmar, "Three murderers who raped, stabbed a woman to death to be brought to trial soonest" (5 June 2012).

[1303] MNA (Myanmar News Agency), "Two who rob, rape and murder a woman from Kyauknimaw Village sentenced to death" (The New Light of Myanmar, 19 June 2012), available at http://www.burmalibrary.org/docs13/NLM2012-06-19.pdf, p.2; DI-012.

[1304] DI-012, DI-077, DM-066.

[1305] See this chapter, section C.6.b: Pre-planning, instigation and role of security forces.

626. Prior to the coverage of this incident in The New Light of Myanmar, graphic images of the woman's dead body were disseminated, accompanied by incendiary comments blaming the incident on "Kalars".[1306] The Rakhine Inquiry Commission noted the rapid circulation of these images "together with incendiary remarks" through "anonymous channels on the internet". It highlighted that the "pictures and news spread even to Rakhine villages and towns without internet access".[1307]

627. According to The New Light of Myanmar, on 3 June 2012 the Wunthanu Rakkhita Association distributed leaflets to the local population at crowded places in Toungup, southern Rakhine State, with the woman's picture. They asked the population of Toungup to "take notice" that Muslims were "intentionally assaulting" Rakhine women. On the same day, a crowd of 300 people in Toungup killed a group of 10 Muslim pilgrims travelling by bus to Yangon.[1308] Given the circumstances described in the article, the attack appears to have been pre-planned.

628. From 8 June 2012 onwards, violence spread across Rakhine State and lasted at least until August 2012. A second wave of violence hit Rakhine State in October 2012. It affected the Rohingya, ethnic Rakhine and Kaman communities across 12 townships. Further violence took place in Thandwe in 2013. Between 2012 and 2013, security forces - sometimes acting alongside the Rakhine - committed serious human rights violations against Rohingya and Kaman across Rakhine State. This included the burning of houses,[1309] looting of shops, extrajudicial and indiscriminate killings, including of women, children and elderly people.[1310] Bodies were often taken by the authorities, with the subsequent whereabouts unknown.[1311] The authorities also conducted mass arbitrary arrests of Rohingya and subjected them to torture in police stations and in Buthidaung prison.[1312] The security forces also willingly failed to intervene to stop the violence committed by the ethnic Rakhine or by the Rohingya. There was also a further tightening of general restrictions against the Muslim population.[1313] According to the Rakhine Inquiry Commission, 192 people were killed, more than 265 were injured and 8,614 houses were destroyed. These figures are believed to be well below the actual scale of the violence.

629. While many other townships were also affected by the violence, the Mission examined in detail events in three main locations as emblematic of the broader picture: Maungdaw in June 2012, Sittwe in June 2012 and Kyaukpyu in October 2012.

(a) Maungdaw violence – June 2012

Maungdaw town - 8 June 2012

630. On Friday 8 June 2012, during the weekly Jumma prayer, the Muslim community in Maungdaw town honoured the 10 Muslim men killed in Toungup five days earlier.[1314] The prayer gathering was planned to take place at the Munshi mosque[1315] in the town centre. A

[1306] See, for example, the following two blog posts: http://hl[illegible]0.blogspot.com/2012/06/arrakan-boiling-with-anti-islamic-fever.html (accessed August 2018) and http://terrorist2012.blogspot.com/2012/08/blog-post.html (accessed August 2018). Many such articles have since been deleted.

[1307] Inquiry Commission on Sectarian Violence in Rakhine State, *Final report* (July 2013), p. 8.

[1308] New Light of Myanmar, "10 Muslims killed in bus attack" (5 June 2012).

[1309] CI-052, CI-0[illegible], CI-068, CI-069, CI-076, CI-077, CI-078, CI-082, CI-083, CI-084, CI-085, CI-087, CI-088, CI-0[illegible], CI-094, CI-097, CI-098, CI-163, CI-165, CI-167, CI-168, CI-170, CI-171, CI-172, CI-173, CI-17[illegible], DI-004, DI-007, DI-012, DI-020, DI-021, DI-023, DI-024, DI-038, DI-051, DI-054, DI-055, DI-0[illegible], QI-076.

[1310] CI-069, CI-0[illegible], CI-077, CI-080, CI-083, CI-085, CI-086, CI-165, CI-166, CI-167, CI-168, CI-170, CI-173, CI-1[illegible]2, CI-193, DI-002, DI-004, DI-007, DI-008, DI-020, DI-021, DI-022, DI-023, DI-024, DI-038, DI-0[illegible]7, DI-049, DI-054, DI-073, QI-076, ZI-002.

[1311] CI-061, CI-0[illegible], CI-088, CI-174, DI-002, DI-022, DI-038.

[1312] CI-065, CI-06[illegible], CI-072, CI-073, CI-076, CI-079, CI-080, CI-083, CI-087, CI-089, CI-091, CI-094, CI-096, CI-17[illegible], CI-175, CI-193, DI-004, DI-006, DI-012, DI-020, DI-037, DI-038, DI-054, DI-073.

[1313] See this chapter, section B: Systermic oppression and persecution of the Rohingya.

[1314] CI-173, CI-17[illegible], CI-175, CI-192, CI-193, DI-004, DI-012, DI-025, DI-073, XI-008.

[1315] Also known as Jame mosque.

large number of men arrived at the mosque. Muslim leaders tried to stop further people from gathering as the mosque was very crowded.[1316] The prayer ended abruptly, including because stones were thrown towards the mosque from the nearby Myoma monastery. People left the mosque and ran in different directions,[1317] with security forces surrounding the area soon after.[1318]

631. Many of the Rohingya present took part in a protest in the streets of Maungdaw town[1319] and the situation deteriorated, with confrontations between Rohingya demonstrators and ethnic Rakhine at the nearby United Guest House and clock tower area, a few hundred metres to the south. According to one interviewee, a group of ethnic Rakhine and monks had gathered at the Myoma monastery, some armed with swords.[1320] Another interviewee explained how she had been warned earlier on that day by a monk about the presence of "Rakhine with long knives" in the vicinity and told that she should go back home.[1321] At the United Guest House, the Rohingya crowd and ethnic Rakhine on top of the building threw stones at each other. A video was made showing the Rohingya crowd throwing stones but not the violence on the side of the ethnic Rakhine.[1322] This video was widely used by the Government to demonstrate that the Rohingya had "rioted" on 8 June 2012. It projected a distorted image of the events.

632. The security forces fired their weapons at Rohingya.[1323] A number of people, including minors, were killed and others were injured. A 10-year old boy was shot and killed.[1324] The violence escalated and witnesses heard the sound of gunshots throughout the night.[1325]

633. In various locations in Maungdaw Township, Rohingya and ethnic Rakhine houses were set on fire by members of the other community.[1326] Muslim shops were looted and destroyed.[1327] The looting was carried out either by ethnic Rakhine in the presence of security forces or directly by the later. Both Rakhine and Rohingya witnesses described the inaction of security forces, including when they were called to help stop the violence.[1328] According to one ethnic Rakhine interviewee:

> *On 8 June at around 9 pm, I saw Muslims surrounding Rakhine villages so I ran to the hills. From there, I saw Muslims setting my village on fire. The village administrator called the security forces but they said they didn't have the capacity to come and help.*[1329]

634. Soon after the first incidents in Maungdaw, national media started publishing stories blaming the Rohingya for the violence. They used incendiary headlines with reference to "terrorism" and to Rohingya "mobs" attacking the ethnic Rakhine community after the Friday prayer, with no mention of violence by ethnic Rakhine, nor the active participation of security forces in the violence.[1330]

[1316] DI-056, DI-073.

[1317] CI-192, CI-193, ZI-002.

[1318] CI-192, ZI-002.

[1319] CI-173, CI-175.

[1320] DI-073.

[1321] DI-075.

[1322] CI-080, CI-175, DI-012, DI-073.

[1323] CI-173, CI-175, CI-193, CI-192, DI-004, DI-025, DI-038, DI-051, DI-054, DI-073, QI-100, XI-008, ZI-002.

[1324] DI-054, ZI-002.

[1325] DI-004, DI-025, DI-054, DI-073.

[1326] CI-076, CI-082, CI-091, CI-092, CI-153, CI-173, CI-174, DI-004, DI-012, DI-038, DI-039, DI-040, DI-045, DI-051, DI-054. DI-073, QI-106, XI-008.

[1327] CI-080, CI-091, DI-073, XI-008.

[1328] DI-040, DI-045.

[1329] DI-040.

[1330] E.g., Myanmar Express, "Circulating news says the Yangon City Hall will be set on fire" (8 June 2012), available at: http://eaglefighter050.blogspot.com/2012/06/blog-post_1187.html (accessed September 2018); Eleven Media Group, "Riots escalate due to insufficient security in Rakhine city"

635. In the following weeks, police officers and Tatmadaw soldiers killed Rohingya in Maungdaw, including women and children.[1331] The killings were unlawful and arbitrary. One witness recalled witnessing a young girl, 8 or 9-years old, who was selling vegetables, shot and killed by the police at a market. The police later said that this had been a mistake.[1332] Another interviewee described the killing of a Rohingya woman by the police:

> *There was a small market close to my house in Hari hamlet. On 9 June 2012, I went there to buy food for my friend. At around 9:30 am, 10 police officers came to the market. One police officer shot at a 30-year old woman who was running. I saw this with my own eyes. The police took the woman in their car.*[1333]

636. Villagers were prevented from collecting dead bodies, or even injured persons, and soldiers shot at persons who did this.[1334] Often, police or soldiers would remove the dead bodies in their vehicles. The Mission received credible reports alleging the presence of two mass graves just outside Maungdaw town on the road leading to Buthidaung.[1335] Moreover, one interviewee stated that he saw soldiers come several times at night to put dead bodies in a pit in a field. He said that dead bodies were swept into the adjacent river, where he saw them floating.[1336]

637. In addition to killings by security forces, the Mission received reports of killings of ethnic Rakhine by Rohingya and killings of Rohingya by ethnic Rakhine.

Arbitrary arrests

638. Arbitrary arrests of large numbers of Rohingya by the police, NaSaKa and Tatmadaw was a further feature of events after 8 June 2012. This continued for some months.[1337] Many of those arrested were arbitrarily accused of participation in the violence, in an apparent act of collective punishment. One interviewee explained how, on 9 June 2012, many Rohingya were taken to the police station near Munshi mosque in big open trucks that could take about 50 people.[1338] In some instances, the detainees subsequently disappeared.[1339] On many occasions, the authorities offered to release a detainee against payment of a heavy bribe. People who could not pay the bribe were often transferred to Buthidaung prison.[1340] One interviewee stated:

> *When the police or Tatmadaw soldiers arrested someone, they used to keep them for two or three days in the local police station and wait for relatives to pay them bribes. Those who managed to pay the money were released. The others were sent to prison. I was arrested, along with seven other villagers and accused of participation in the violence. Some villagers were poor and couldn't pay the bribe. They were taken to Buthidaung prison and sentenced to 10 years imprisonment. Others, including myself, bribed the authorities and were released.*[1341]

639. Some ethnic Rakhine were also arbitrarily arrested and detained, accused of participation in the violence.[1342]

(10 June 2012). One interviewee stated that he was very surprised to discover that Eleven Media already posted pictures about the violence on 8 June when both the phone lines and the internet were cut (DI-176).

[1331] CI-082, CI-173, CI-192, CI-193, DI-003, DI-004, DI-025, DI-038, DI-073, XI-008, ZI-002.

[1332] DI-073.

[1333] DI-003

[1334] CI-082, CI-173, DI-054.

[1335] K-106.4.

[1336] CI-173.

[1337] CI-072, CI-076, CI-082, CI-091, CI-136, CI-173, CI-174, CI-175, CI-192, CI-193, DI-006, DI-025, DI-038, DI-054, DI-073, DI-075, QI-108, QI-106, XI-008, ZI-002.

[1338] DI-073.

[1339] CI-173, DI-025.

[1340] See this chapter, section C.3: Torture and ill-treatment at Buthidaung prison.

[1341] CI-065.

[1342] DI-039.

640. In addition to the mass arrests of Rohingya, the authorities also arrested specific Rohingya whose names were on prepared lists.[1343] Young men, educated people, NGO workers and religious leaders were targeted.[1344] NGO workers from Maungdaw and Buthidaung Townships described receiving a letter asking them to go to the police station because of their alleged involvement in the violence. Some were released upon payment of a bribe, others transferred to Buthidaung prison. One interviewee was told by a police officer that his name was on a list of persons "who pass information to the international community". The police officer said that he had received orders "from higher authorities" to monitor and report on him and asked him to pay a bribe.[1345] Fear of arrest meant that many Rohingya mostly stayed at home or in hiding when security forces approached their village.[1346] Rohingya started suffering from hunger, especially children.[1347]

(b) Sittwe violence – June 2012

641. It is estimated that before the June 2012 violence Sittwe town was home to about 73,000 Muslims (Rohingya and Kaman), about half of the total population.[1348]

642. Soon after violence commenced in Maungdaw on 8 June 2012, there was violence in Sittwe, more than 100 kilometres to the south.[1349] Most of the violence took place in the first few days. According to the report of the Rakhine Inquiry Commission, the violence in Sittwe led to the death of 11 Rakhine and 24 Rohingya as well as the destruction of 666 Rakhine houses and 2,967 Rohingya houses.[1350] The actual scale of casualties and destruction in Sittwe is believed to be much higher.

643. The violence saw the burning and looting of houses, murders, summary executions and large-scale displacement affecting both ethnic Rakhine and Muslims. The majority of the Muslim population of Sittwe town was displaced by the violence. Six years on, most still live in displacement camps and sites built in the Sittwe countryside, totally segregated from the ethnic Rakhine population. Aung Mingalar, often referred to as a "Muslim ghetto", is the only remaining Muslim area in Sittwe town.[1351]

644. Given its lack of access to Myanmar, the Mission has not been able to gather sufficient information on the violence perpetrated against ethnic Rakhine in Sittwe in June 2012. According to credible reports, groups of Muslims carried out arson attacks against houses of ethnic Rakhine and monasteries.[1352] This warrant further investigation.

Involvement of security forces

645. The security forces played an active role in the violence against Muslims in Sittwe, often attacking them and their houses alongside ethnic Rakhine.[1353] In other cases, security forces provided support to Rakhine who were leading the attacks[1354] or refused to assist Muslims who sought their protection.[1355] One Kaman interviewee who sought protection was told by the security forces that they could not assist in the absence of an instruction from higher authorities.[1356] Similarly, a Rohingya interviewee explained that, on 10 June, a large group of ethnic Rakhine attacked his village and Rohingya families took shelter in a

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[1343] CI-061, CI-136, CI-173, CI-175, DI-025.

[1344] CI-061, CI-065, DI-003, DI-004, DI-025, DI-037, DI-038, DI-051, DI-056, QI-106.

[1345] CI-061

[1346] DI-025.

[1347] DI-009, DI-054, DI-075.

[1348] V-237

[1349] CI-096; K-076.9.15.

[1350] Inquiry Commission on Sectarian Violence in Rakhine State, *Final report* (July 2013).

[1351] See this chapter, section B.2.d: Specific restrictions in central Rakhine State.

[1352] KI-076.9.01, KI-076.18.

[1353] CI-066, CI-086, CI-166, DI-020, DI-023, DI-035, DI-049, DI-050, DI-055.

[1354] CI-069, CI-086.

[1355] CI-066, CI-166.

[1356] CI-166, V-166.

house. They called the police for assistance but, when the officer understood that they were Rohingya, he hung up.[1357]

Murders and summary executions

646. Ethnic Rakhine, police officers and Tatmadaw soldiers killed Muslims in Sittwe in June 2012. In the majority of cases, ethnic Rakhine killed their victims with large knives,[1358] while the security forces used guns.[1359] Sometimes, ethnic Rakhine perpetrators were known to Muslims villagers. [1360] One interviewee from Yasina hamlet explained how he recognised some of the ethnic Rakhine who were armed with large knives:

> *I recognized many of them. We had a very good relationship before. When I saw this, I had tears in my eyes. These were people with whom we used to share our meals for Eid and now they were standing there to kill us.*[1361]

647. In contrast, the Mission received an account from one Rohingya describing how an ethnic Rakhine person saved the life of her mother who was about to be killed by another Rakhine.[1362]

648. In some cases, ethnic Rakhine slit the throats of their victims.[1363] In other cases, they mutilated their bodies, including the breasts of women.[1364] In addition to killings by ethnic Rakhine, Tatmadaw soldiers, police officers or Lon Htein[1365] shot indiscriminately at Muslims, including while their houses were being burned.[1366] One interviewee described seeing his brother shot and killed when soldiers opened fire on a group of Muslims sitting in a paddy field.[1367] Another interviewee described the killing of her neighbour by a Tatmadaw soldier in Sittwe town, because he was outside five minutes after the curfew started.[1368]

Arson attacks

649. There was extensive burning and destruction of houses and mosques in Sittwe.[1369] Narzi hamlet was one of the most affected. Houses of ethnic Rakhine were also burned, but Muslims were disproportionality affected. Security forces actively participated in the burning of Muslim houses. In some cases, ethnic Rakhine and security forces jointly burned Muslim houses. Witnesses described to the Mission how the Tatmadaw and/or the police either helped set the houses on fire[1370] or provided physical protection to ethnic Rakhine who were doing so.[1371] For example, ethnic Rakhine threw bottles filled with petrol on Muslim houses, while security forces shot at the bottles causing the fire to spread.[1372] In other instances, security forces set houses on fire on their own, targeting Muslim houses.[1373]

[1357] CI-066.

[1358] CI-066, CI-075, CI-078, CI-086, CI-097, DI-020, DI-049, DI-050.

[1359] CI-077, CI-086, DI-007, DI-020, DI-023, DI-035, DI-049, DI-050.

[1360] CI-066, DI-023.

[1361] DI-023.

[1362] DI-050.

[1363] CI-097, DI-023.

[1364] CI-077, CI-078, CI-086, DI-020, DI-049; KI-076.9.16.

[1365] Lon Htein is short for *Lon-chon-hmu Htein-thein Tat-yin*, or "security preservation battalion". It is also known as the "special police" or "riot police".

[1366] CI-069, CI-077, CI-086, DI-007, DI-020.

[1367] DI-020.

[1368] DI-050.

[1369] CI-066, CI-067, CI-068, CI-069, CI-078, CI-086, CI-096, CI-097, CI-156, CI-159, CI-166, DI-007, DI-020, DI-023, DI-035, DI-049, DI-050, DI-055, K-076.1

[1370] CI-066, DI-007, DI-020, DI-035, DI-055.

[1371] CI-068, CI-069, CI-077, CI-086.

[1372] CI-066, DI-035, DI-055.

[1373] DI-023.

The security forces also shot at villagers attempting to extinguish the fires.[1374] One interviewee described his experience in Narzi hamlet on 12 June:

> *First, the Rakhine were throwing bottles filled with petrol on huts. Muslims were trying to stop the burning by pouring water on the fire, but the police and Tatmadaw soldiers shot at them to prevent them from doing this. Afterwards, security forces came and started using fire launchers to burn the buildings that had not yet burned properly.*[1375]

Displacement and move to IDP camps

650. Most Rohingya and Kaman from Sittwe town and the surrounding areas were displaced.[1376] Some fled to Muslim villages outside Sittwe town.[1377] Some left on the advice of the authorities.[1378] One interviewee described how Muslims sheltering in a mosque in Konchi hamlet were removed by police and left at gunpoint.[1379] In some instances, Tatmadaw soldiers provided support to Muslim victims, although one victim reported that this was on the condition that they leave the town.[1380] Soldiers escorted victims outside Sittwe town towards Muslim villages in the countryside, with some such as pregnant women and children transported in military cars.[1381] Muslims initially took refuge in places such as schools, later moving to displacement camps. As of 30 September 2013, 95,500 people were displaced in Sittwe Township, mainly Muslims (Rohingya and Kaman) with a smaller number of ethnic Rakhine.[1382] One elderly interviewee from Narzi hamlet shared the pain associated with leaving his village:

> *We cried when we left. 25 years of hard work was lost. If I do something wrong to you, then you can do something back to me. But if I am innocent, why are you torturing me? What did we do wrong? My time is almost finished, but what will happen to my children and my grandchildren?*[1383]

(c) Kyaukpyu violence – October 2012

651. Kyaukpyu Township is a coastal township in Rakhine State, along the Bay of Bengal, about 120 kilometres southeast of Sittwe with a population of approximately 165,000 people.[1384] Prior to October 2012, the township had a majority ethnic Rakhine population, with Kaman and Rohingya minorities. There was no major violence reported in Kyaukpyu in June 2012.[1385] However, a larger number of security forces were deployed there after June.[1386]

652. From 22 to 25 October 2012, ethnic Rakhine attacked Rohingya and Kaman in Kyaukpyu, destroying mosques, burning houses, and looting properties.[1387] Several wards and village tracts were affected, with Paik Seik ward being one of the most affected areas.[1388] The report of the Rakhine Inquiry Commission stated that violence led to 11 deaths, 42 injuries (affecting both ethnic Rakhine and Rohingya) and the destruction of 860

[1374] DI-007, KI-076.9.15; KI-076.9.16, V-166.

[1375] DI-007.

[1376] CI-066, CI-069, CI-077, CI-078, CI-096, DI-007, DI-023, DI-035.

[1377] CI-096, DI-007.

[1378] DI-023.

[1379] DI-035.

[1380] CI-069.

[1381] CI-066, CI-077, CI-078.

[1382] K-69.

[1383] DI-007.

[1384] Ministry of Labour, Immigration and Population, Department of Population, "The 2014 Myanmar Population and Housing Census – Rakhine State, Kyaukpyu district" (October 2017).

[1385] CI-165, CI-167, CI-168, CI-170.

[1386] CI-084, CI-088, CI-165, CI-168, CI-170.

[1387] CI-167, CI-168, CI -170, DI-021; KI-109, V-050.

[1388] Including the wards of Ah Yar Shi, Paik Seik (East and West) and Than Pan Chaung; and the village tracts of Taung Yin, Pyin Hpyu Maw and Myin Pyin.

Rohingya houses. However, the number of casualties is believed to be much higher. The Mission interviewed ethnic Rakhine, Kaman and Rohingya in relation to the violence in Kyaukpyu.

653. Ahead of the October 2012 violence, there was increased tension in Kyaukpyu and rumours about possible attacks on Muslim villagers by ethnic Rakhine. Muslim villagers were informed by their ethnic Rakhine friends of the likelihood of an attack.[1389] One interviewee recalled a phone call from an ethnic Rakhine friend, informing him that there was a "high chance" that there would soon be an attack by Rakhine and the security forces.[1390] A meeting was held shortly before the violence when Muslims were warned about the possibility of such an attack.[1391]

654. The Paik Seik ward was mixed, with Kaman the majority in the east and ethnic Rakhine in the west. After the June 2012 violence, villagers were already paying the security forces for protection.[1392] Security forces initially provided such protection but left Paik Seik on 22 October 2012. At 8pm on 22 October 2012, a group of ethnic Rakhine arrived and set fire to a Muslim house, leaving shortly afterwards.[1393] Other security forces were in the vicinity when this happened.[1394]

655. On 23 October, more than 100 ethnic Rakhine, armed with swords, knives, slingshots and other rudimentary weapons, attacked east Paik Seik. They also brought tyres and bottles filled with flammable liquid.[1395] There were violent attacks on both Kaman and Rohingya villagers, and the looting and burning of their properties.[1396] The ethnic Rakhine were accompanied by the police and soldiers armed with rifles.[1397] Witnesses stated that they did not recognize the majority of the ethnic Rakhine who participated in the violence.[1398]

656. There was a clash between ethnic Rakhine and a large group of Rohingya and Kaman around the Jame mosque in east Paik Seik.[1399] The mosque was partially burned[1400] and some people were injured,[1401] with Muslim houses burned.[1402] The report of the Rakhine Inquiry Commission states that two ethnic Rakhine were killed in the clashes.[1403]

657. Soldiers told villagers to return to their houses, but they then opened fire at Kaman and Rohingya villagers gathered near the mosque.[1404] Ten persons, including a child, were killed and a number of others injured.[1405]

658. On the same night, ethnic Rakhine and security forces burned Kaman and Rohingya houses in west Paik Seik.[1406] Soldiers and police opened fire on the Rohingya and Kaman who tried to extinguish fires, killing two and injuring others.[1407] One interviewee explained

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[1389] CI-085, CI-165, CI-167, DI-021, V-050.

[1390] CI-165.

[1391] QI-076, KI-109, V-050.

[1392] CI-165, DI-021, DI-024, KI-109.

[1393] CI-168, DI-021, QI-076, KI-109, V-050, V-051.

[1394] DI-021, V-050.

[1395] CI-165, V-050.

[1396] CI-083, CI-165, CI-168, CI-170, DI-024, QI-076.

[1397] BM-025, CI-083, CI-165, CI-168, DI-021, QI-076; V-050.

[1398] CI-085, DI-021; V-050.

[1399] CI-083, CI-085, CI-088, CI-165, CI -168, CI-170; V-051.

[1400] CI-085, CI-165, CI-168, CI-170.

[1401] CI-168, V-051.

[1402] CI-083, DI-022.

[1403] CI-083, CI-084, CI-088.

[1404] CI-085, CI-165, CI-167, CI- 168, CI-170, QI-076; K-109; V-049, V-050.

[1405] CI-083, CI-085, CI-165, CI-167, CI-168, CI-170, DI-022, DI-024.

[1406] CI-088, CI-170, QI-076.

[1407] QI-076, DI-021; V-050.

how he and others had tried to extinguish burning houses, but that members of the security forces had pointed their weapons and told them not to do so.[1408]

659. Many Kaman and Rohingya villagers were forced to spend the night on the beach, from where they watched their village burn.[1409] The burnings continued the following day, with the police and soldiers using "launchers",[1410] alongside the ethnic Rakhine using bottles filled with flammable liquid.[1411] Soldiers were also seen removing dead bodies from the village.[1412] Ethnic Rakhine and the security forces came to the seashore and prevented villagers from returning to the village, while those still in the village were forced to go to the seashore.[1413] A 15-year old boy, who reportedly had a mental disability, was stabbed to death by a group of ethnic Rakhine in the presence of security forces.[1414] Ethnic Rakhine and security forces then looted the empty houses and shops.[1415] One man described being ordered to leave his house by the police and carrying his elderly mother:

> *The police kept saying that time was up. One police officer hit me on my hands with a stick, and I dropped my mother. She hurt her back and died 10 days later. I still remember the incident and cannot bear it. My mother died because of me.*[1416]

660. When the tide was sufficiently high, towards nightfall, many Muslim villagers left on approximately 50 fishing boats. Most boats headed north towards Sittwe.[1417] The majority of the displaced from Paik Seik ultimately moved to the displacement camps and sites in Sittwe.

661. The violence continued in many areas of Kyaukpyu until 25 October 2012. Credible satellite imagery analysis indicates that the areas affected by burning and destruction in Kyaukpyu were all predominantly Muslim neighbourhoods.[1418]

(d) Sexual and gender-based violence during the 2012 violence

662. During the 2012 violence, Rohingya women and girls were raped, mutilated, abducted and killed. For example, a female eyewitness from Maungdaw town described how in June 2012 she saw her 16-year old neighbour being raped outside her house and then killed by soldiers and police.[1419] A 27-year old female from Sittwe described the killing of her cousin:[1420]

> *On Monday 12 June, my 14-year old cousin went out of the house to look for her mother and never returned home. At around 2am, her dead body was found. She was covered with a piece of cloth. I was shocked when I saw her body. Her left breast was cut and the other one was severely injured, with bite marks. It was difficult to*

[1408] QI-076.

[1409] CI-083, CI-084, CI-165, CI-170, DI-021, DI-022, QI-076; V-051.

[1410] Tatmadaw soldiers used weapons referred to by victims as "launchers". They were described as making loud explosive sounds, after which a whole building or set of buildings rapidly caught fire. "Launcher" likely refers to a weapon that fires a munition that explodes upon impact.

[1411] CI-088, CI-165, CI-170, QI-076.

[1412] CI-088, DI-022; V-050.

[1413] CI-085, CI-088.

[1414] CI-085, CI-168, CI-170, V-051.

[1415] CI-083, CI-168, DI-021, V-050.

[1416] CI-165, V-050.

[1417] CI-170.

[1418] Human Rights Watch, *Damage Assessment Summary for Kyaukpyu – Based on satellite imagery recorded on morning of 25 October 2012*; Human Rights Watch, *Burma: New Violence in Arakan State – Satellite Imagery Shows Widespread Destruction of Rohingya Homes, Property* (26 October 2012).

[1419] DI-038.

[1420] CI-077.

> *recognize her face as her neck was twisted and it was not in the right position. I think she was raped.*[1421]

663. There are also credible reports that up to 20 women and girls were abducted in June 2012 from the Narzi quarter of Sittwe and subjected to sexual slavery by soldiers.[1422] Another woman, approximately 22-years old, was reportedly detained at a military hospital and forced to marry a soldier from the Tatmadaw medical corps.[1423] In most cases of sexual violence during this period, the alleged perpetrators were members of the Tatmadaw, the NaSaKa or other security forces. Sexual violence was perpetrated during home searches[1424] or on security forces' compounds.[1425] Most sexual violence was not reported to the authorities as Rohingya considered that this would result in ill-treatment or arrest.[1426]

2. Kaman Muslims of Rakhine State

664. Unlike the Rohingya, Kaman Muslims are one of the 135 officially recognized ethnic groups of Myanmar, the only Muslim group to have been granted this status. The Rohingya not having been counted in the 2014 census, most of the 28,700 Muslims recorded in Rakhine State were likely Kaman. Despite being citizens of Myanmar, and not appearing to have problematic relationships with ethnic Rakhine neighbours prior to the 2012 violence,[1427] the Kaman have suffered serious human rights violations. This has significantly worsened since the 2012 violence, possibly attributable both to the prevailing anti-Muslim sentiment and to the frequent absence of distinction between the Kaman and the Rohingya. One Kaman refugee, who previously lived in Kyaukpyu, stated:

> *In Myanmar, it is a crime to be a Muslim. The authorities are saying that the Rohingya are illegal Bengalis. Then what about us? We are nationals of Myanmar. I believe the main issue for the authorities is religion.*[1428]

665. In March 2018, a former Minister and member of Parliament from the Union Solidarity and Development Party opposed a decision by the Government to resettle a small group of Kaman from displacement camps to Yangon. He reportedly said:

> *I think it will be more appropriate if we treat the cancer that is occurring in Rakhine State within Rakhine State itself. Allowing the Kaman families to resettle in Yangon would be like allowing the cancer to spread across the country.*[1429]

666. The Kaman were directly affected by the 2012 violence, particularly the second wave in October. Kaman were killed and injured, including by security forces. Many were displaced and moved to several displacement camps and sites in Rakhine State. The actual number of Kaman affected is unclear. The report of the Rakhine Inquiry Commission provided no information on Kaman, referring only to "Bengali Muslims" or "Muslims".[1430]

667. The Kaman have shared similar experiences to the Rohingya, including being insulted and called "Kalar".[1431] One interviewee stated that at school Kaman students were only referred to as "Kalar" and never by their names, and he was told by a teacher that he was slow in class because he was an "uneducated Kalar".[1432] Like the Rohingya, Kaman had to obtain authorisation to travel between townships (known as a "Form 4"), even

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[1421] CI-077.
[1422] K-076.19.
[1423] K-076.19.
[1424] K-076.6.
[1425] K-076.7.
[1426] K-076.8.
[1427] V-355.
[1428] CI-165.
[1429] V-355.
[1430] A. South and M. Lall (editors), *Citizenship in Myanmar: Ways of being in and from Burma* (ISEAS – Yusof Ishak Institute/Chiang Mai University Press, 2017).
[1431] CI-052, CI-167.
[1432] CI-167.

though they do not fall into the category of either "foreigners" or "Bengali".[1433] The process to obtain a travel authorisation is expensive, lengthy and involves considerable bribes.[1434]

668. Thousands of Kaman remain in displacement camps and sites in Rakhine State, six years after the 2012 violence. Others have moved to Yangon or abroad. The Myanmar authorities appear to have taken no concrete steps towards facilitating the return of Kaman to their places of origin. Recently it was reported that, although more than 1,000 Kaman continue to live in a displacement camp close to their place of origin in Kyaukpyu, the authorities continue to deny their right to return, citing unspecified security concerns.[1435]

3. Torture and ill-treatment at Buthidaung prison

> *In Buthidaung prison, the situation was terrible. They beat everybody with wooden sticks. There were restrictions on everything: going to the toilets, speaking, moving. When we went out of the cell we were beaten, and when we came back we were beaten. People had to behave like robots. At night, we couldn't move or we would get kicked. Buthidaung prison was like hell.*[1436]

669. The Mission received multiple accounts of torture and other forms of cruel, inhuman or degrading treatment or punishment against Rohingya men and boys held in Buthidaung prison following the 2012 violence.[1437] Similar violations were verified up until 2017, indicating that ill-treatment at Buthidaung prison is endemic. Mistreatment was particularly rife in the period after the June 2012 violence in Rakhine State. However, similar patterns were seen in the aftermath of the 9 October 2016 attacks by ARSA and the subsequent "clearance operations", when significant numbers of Rohingya men were arrested. There are indications that similar abuse also occurred in the context of the "clearance operations" after 25 August 2017.[1438] Much of the abuse was perpetrated directly by the prison authorities, but also by ethnic Rakhine fellow-detainees,[1439] with facilitation or sanction from the prison authorities. Information received suggests that the mistreatment was particularly acute against pre-trial detainees and that conditions improved once a person had received a custodial sentence.[1440]

670. Detainees frequently suffered mistreatment prior to their arrival at the prison, while being transported, or when taken from the prison to court hearings.[1441] Tatmadaw soldiers usually provided transportation, with detainees transported in large, open military trucks. Detainees would be literally thrown into the back of the trucks, normally after their hands had been tied behind their backs. They were routinely covered with a large tarpaulin and then subjected to repeated beatings, with rifle butts or clubs, or kicked by soldiers. Soldiers would also sit on or walk over the detainees under the tarpaulin. Beatings and other forms of mistreatment would continue throughout the journey. One interviewee described the treatment he suffered:

> *As well as hitting us with rifle butts, Tatmadaw soldiers put cigarettes out on our faces. While he forced a lit cigarette into my nose, one soldier said, "please, have a cigarette". The hair inside my nose burned and it was very painful. The soldiers tortured us all like this throughout the 16 kilometres journey to the prison.*[1442]

[1433] See this chapter, section B.2.b: Requirement for a temporary travel permit to travel between townships.

[1434] CI-052, CI-167, CI-171.

[1435] V-356.

[1436] DI-037.

[1437] While the Mission has not received information to suggest that detainees from other ethnic groups were treated in a similarly manner, this should not be discounted and warrants further investigation.

[1438] CI-176, RI-013.

[1439] CI-136, QI-105, QI-106, QI-107, RI-011.

[1440] K-076.3.

[1441] CI-136, DI-037, QI-105, QI-106, RI-011, K-076.

[1442] CI-136.

671. The mistreatment during transportation led to serious injuries among detainees, including broken bones and head injuries, sometimes with lasting consequences. One interviewee described the difficulties he had in breathing due to the impact on his chest,[1443] while another explained how he lost consciousness during the journey because of the beatings.[1444] Another interviewee explained that, more than five years later, he still had difficulties walking, due to the pain from his back and a broken wrist.[1445] Another interviewee remembered how a fellow detainee was beaten unconscious on a journey back from a court hearing.[1446]

672. Once detainees had arrived at Buthidaung prison, they continued to suffer ill-treatment. Cells were extremely cramped, with numbers vastly exceeding capacity. There were no beds or bedding, and often not even the space to lie down. Former detainees estimate that the number of detainees in the cells was up to seven times the actual capacity, with hundreds of men held together in the same room.[1447] Food and drink was insufficient, often only involving small portions of rice, with allegations of instances when the rice was thrown on the ground for them to eat by licking the floor.[1448] Fluids given to detainees appear to have deliberately included urine at times.[1449]

673. Much of the mistreatment was perpetrated by ethnic Rakhine detainees, facilitated by the prison authorities.[1450] There are allegations that some Rakhine may have been brought into the prison for this specific purpose.[1451] One former detainee referred to 10 ethnic Rakhine detainees who were "in charge of discipline",[1452] although the overall number involved may have been larger.[1453] The ethnic Rakhine detainees perpetrated the abuse throughout all hours of the day, particularly when they were sharing the same cells as Rohingya detainees. Mostly it involved severe, repeated and systematic beatings with wooden sticks, including while being forced to adopt a "praying position", kneeling on the ground. Similar beatings were also carried out by prison guards. Guards used catapults to fire pellets at detainees from outside the cells and some reportedly made detainees crawl on the floor and beat them in this position.[1454]

674. The beatings were accompanied by insults and references to retribution for the alleged violence.[1455] For example, one interviewee stated that the ethnic Rakhine detainee beating him said, "you burned our homes, you killed our people. Is this your country?"[1456] It appears that men with beards, often religious persons, were particularly targeted and suffered mistreatment focused on the forced removal of their beards.[1457] One Rohingya

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[1443] DI-037.

[1444] QI-106.

[1445] QI-105.

[1446] DI-037.

[1447] CI-130, CI-136, DI-037, QI-105, QI-106, QI-107, QI-108, RI-011.

[1448] CI-130, CI-136, CI-176, DI-037, QI-105, QI-107, KI-076.4.

[1449] CI-136, CI-176, QI-108.

[1450] DI-037; KI-076.2, KI-076.3, KI-076.5.

[1451] In 2013, the Special Rapporteur on the situation of human rights in Myanmar said: "In Rakhine State, following violence in June 2012, Muslim men and boys were allegedly arbitrarily detained in Buthidaung prison. They were subjected to three months of systematic torture and ill-treatment by prison guards and up to 20 prison inmates, who appear to have been brought into the prison for the specific purpose of administering beatings to Muslim prisoners", A/68/397, para. 10; KI-076.4.

[1452] DI-037.

[1453] A/68/397, para. 10.

[1454] QI-105, QI-107, QI-108; KI-076.4, KI-076.5. Similar beatings continued more recently. One interviewee informed the Mission that, when he visited his relatives in the prison in early 2017, they were "hardly recognisable", with marks on their bodies and their faces swollen and black.

[1455] CI-130, CI-136, QI-105, QI-106, QI-108.

[1456] QI-105.

[1457] CI-082, CI-176. This happened to Rohingya men detained during the post-25 August 2017 "clearance operation", including an account of more than 30 religious leaders whose beards were burned off with gas lighters.

interviewee stated that he was forced to "pull out the beards" of 10 to 20 detainees, with his hand: "It was very painful for all of them. They were bleeding, and I was helpless. I did not have any other option. I felt bad."[1458]

675. For the period following the June 2012 violence, there are also credible and consistent reports of men and boys being subjected to sexual violence, including rape, sexualised torture and humiliation, either by authorities or in their presence.[1459] Rohingya boys were detained in the same cells as adult men. Detainees stated that guards anally raped Rohingya boys. At night, groups of boys and young men were subjected to penile rape, both orally and anally, by ethnic Rakhine detainees, often in the same cell as other detainees. One former detainee described how boys were taken into the latrine after dark:

> *Almost every night they took these boys to the latrine in the cell. They forced them to perform oral sex and raped them. If they refused, they put their face into the latrine. We used to hear the screaming of the victims, but we were helpless and could do nothing.*[1460]

676. Rohingya men and boys were also subjected to sexual humiliation, often in the presence of other inmates. Detainees experienced the degrading treatment of being forced to walk naked from their cell to the shower and showering in groups of up to 20 to 30 persons in front of one another, including family members, which was particularly uncomfortable and considered shameful.[1461] Detainees reportedly had to wait outside their cells naked until they dried.[1462] Another detainee described how guards burned the genitals of Rohingya detainees.[1463]

677. A significant number of Rohingya detainees died because of mistreatment in Buthidaung prison. Some were beaten to death and corpses were dragged out of the cells.[1464] One former detainee described seeing four people killed in his cell: "They were beaten to death by the guards in front of me. Three others, who were beaten a lot, died a few months later."[1465]

678. Detainees also suffered serious injuries, including broken bones, infected wounds and other life-changing injuries.[1466] One former detainee described the impact of his regular beatings, for more than a month, by both ethnic Rakhine and guards:

> *My back was injured, and I can no longer carry things on my back. They beat me on my toes and ankle and my little finger was broken. I have scars on my hands and feet and suffer pain on my back and waist.*[1467]

679. Corruption was also prevalent within Buthidaung prison. Prison guards demanded bribes to reduce or end the beatings or to provide preferential treatment.[1468] Relatives or friends had to pay a fee to visit detainees.[1469] Large payments could also get prisoners released.[1470]

[1458] CI-136.

[1459] CI-136, DI-037, QI-107, QI-108.

[1460] CI-136.

[1461] CI-130, CI-136, DI-037, QI-105, QI-106, QI-108; KI-076.3, KI-076.4, KI-076.5.

[1462] KI-076.3, KI-076.4.

[1463] DI-037.

[1464] CI-136, DI-037, QI-105, QI-106, QI-107, QI-108, RI-011; KI-076.2, KI-076.4, KI-076.5.

[1465] QI-106.

[1466] CI-136, DI-037, QI-107.

[1467] CI-136.

[1468] CI-082, CI-175, DI-037, QI-104, QI-107.

[1469] CI-082, CI-136, QI-104, QI-107.

[1470] DI-010, DI-037; K-076.4.

4. Government response to the 2012 violence

(a) Curfews and prohibition of meetings of more than five people

680. One of the first responses of the Government to the violence in Maungdaw was the imposition by the Maungdaw Township Administrator on 8 June of a curfew and prohibition of public gatherings of more than five people.[1471] Similar 2012 orders were imposed in Buthidaung, Kyaukpyu, Ramree, Sittwe and Thandwe townships.[1472] According to the law, such orders should only remain in force for two months, unless the President directs otherwise in "cases of danger to human life, health or safety, or a likelihood of a riot or an affray".[1473]

681. By September 2014, all curfew orders in Rakhine State were lifted, except in Maungdaw and Buthidaung Townships, where they have remained in force continuously since 2012.[1474] According to credible reports, the orders are more strictly enforced in Maungdaw and Buthidaung towns than in surrounding rural areas.[1475]

682. According to the curfew orders, people were not allowed to be outside their homes between 6pm and 6am. These times were later shortened but, on 25 August 2017, the curfew hours in Maungdaw and Buthidaung Townships were again extended.[1476] Although the curfew orders were drafted in general terms, in practice they have been enforced mainly against Muslims generally, and in Maungdaw and Buthidaung Townships against the Rohingya. Enforcement has been undertaken by village administrators, the NaSaKa, the BGP and the Tatmadaw.[1477]

683. Many Rohingya interviewees referred to the curfew as one of the serious restrictions they faced after the 2012 violence.[1478] Given its prolonged and discriminatory application, it has had severe, adverse effects on the lives of the Rohingya in Rakhine State, including on access to livelihoods.[1479] Interviewees also said that they were not allowed to keep lights or candles on during curfew hours.[1480] In some isolated cases, security forces were more lenient and made exceptions, allowing Rohingya to be outside during curfew hours.[1481] However, in the majority of cases, the curfew was strictly enforced, especially in 2012, and in the periods after the ARSA attacks in 2016 and 2017. In some cases, security forces went

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[1471] Township General Administration Department, Curfew Order No. 1/2012 (8 June 2012), available at: http://www.myanmargeneva.org/pressrelease/2.%20Preventive%20measures%20and%20actions%20taken%20by%20the%20government.pdf. See page 7. The power to impose such curfew orders appears to have been increasingly used by the General Administration Department, through township administrators. It is viewed as an indirect way for the Tatmadaw to exercise control. See: M. Crouch, "The Everyday Emergency: Between the Constitution and the Code of Criminal Procedure", in *Constitutional Change and Legal Reform in Myanmar*, A. Harding, Khin Khin Oo, eds. (Hart Publishing/Bloomsbury, 2017), p. 165.

[1472] See presentation posted by the Permanent Mission of the Union of Myanmar to the United Nations and other international organizations in Geneva on "Preventive measures and actions taken by the Government", p. 2, available at: http://www.myanmargeneva.org/pressrelease/2.%20Preventive%20measures%20and%20actions%20taken%20by%20the%20government.pdf

[1473] Code of Criminal Procedure, s. 144(6).

[1474] V-047.

[1475] V-047.

[1476] See also chapter V, section D.3: An enduring catastrophe.

[1477] CI-125, DI-073, V-047. See also A/HRC/32/18

[1478] CI-062, CI-063, CI-064, CI-076, CI-079, CI-080, CI-082, CI-084, CI-089, CI-092, CI-094, CI-174, CI-175, CI-181, CI-183, CI-184, CI-185, CI-186, CI-187, CI-188, CI-189, CI-192, CI-194, CI-195, CI-196, CI-198, CI-199, DI-003, DI-004, DI-047, DI-050, DI-052, DI-053, DI-054, DI-073, DI-075, DI-076, RI-002, RI-003, RI-009, RI-010, RI-012, RI-015, RI-017.

[1479] DI-053.

[1480] CI-082, CI-094, DI-053.

[1481] DI-075, DI-076.

as far as killing Rohingya – including elderly people – who were outside during curfew hours.[1482]

684. The curfew orders also prohibited gatherings of more than five people on "roads, streets, the main road, lanes, garden (or) mosques and public schools".[1483] This has had a far-reaching adverse impact over the subsequent six years. The list of public places where gatherings of more than five people is not allowed reveals discriminatory intent, as it includes mosques but not monasteries or temples. Given the importance to Muslims of congregational prayers in mosques, this prohibition represents a serious obstacle to the right to freedom of religion, including religious worship, protected under international human rights law, including by article 18 of the UDHR and article 14 of the CRC. Credible reports indicate that some Rohingya have gathered secretly to pray in private houses, makeshift mosques or madrasas in remote areas.[1484] This long-lasting prohibition of gatherings of more than five people is also a violation of the right to peaceful assembly, protected for example by article 20(1) of the UDHR and article 15 of the CRC.

(b) State of emergency

685. On 10 June 2012, President Thein Sein reinforced the curfew orders by declaring a state of emergency in Rakhine State under section 412(a) of the Constitution.[1485] He stated that this was to "bring about security and peace and stability for the people immediately". In his declaration, the President invoked section 413(a) of the Constitution, the power to "obtain the assistance of the Defence Services". According to section 414(b), when declaring a state of emergency, the President may, if necessary, restrict or suspend one or more fundamental rights of the citizens residing in the areas where the state of emergency is in operation. However, the ordinance adopted by the President did not invoke this power.

686. The state of emergency in Rakhine State remained in force for nearly four years. According to international human rights law, a state of emergency can only be invoked in the presence of a "public emergency which threatens the life of the nation" [1486]. The Myanmar Government itself did not see the situation in Rakhine State in those terms. On the contrary, in November 2015, at Myanmar's second Universal Periodic Review (UPR) in the United Nations Human Rights Council, the Permanent Representative of Myanmar stated that there had been no inter-communal violence in Rakhine State since 2012, and that "peace and stability in Rakhine State has been restored". He highlighted that communities in Buthidaung and Maungdaw were now "engaging in inter-communal trade and business" with their children attending school together.[1487]

687. The Mission considers that the prevailing situation in Rakhine State was not "threatening the life of the nation" and that the continuance of the state of emergency and curfew orders was unjustified. Instead, these measures were a means to restrict the lives of

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[1482] CI-076, CI-174, DI-050, DI-054, DI-073.

[1483] Township General Administration Department, Curfew Order No. 1/2012 (8 June 2012), available at: http://www.myanmargeneva.org/pressrelease/2.%20Preventive%20measures%20and%20actions%20taken%20by%20the%20government.pdf. See page 7.

[1484] V-047.

[1485] Republic of the Union of Myanmar, President Office, Ordinance No. 1/2012 (10 June 2012), available at: http://www.myanmargeneva.org/pressrelease/2.%20Preventive%20measures%20and%20actions%20taken%20by%20the%20government.pdf . See page 10

[1486] United Nations Human Rights Committee: *General Comment No. 29: Derogations during a State of Emergency* (31 August 2001), CCPR/C/21/Rev.1/Add.11. The Human Rights Committee specified that, "not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation". The declaration of the state of emergency may also be viewed as unconstitutional since it did not specify its duration, as required by section 414(a) of the Constitution.

[1487] Statement by Mr. Maung Wai, Permanent Representative of the Union of Myanmar to the United Nations and other international organizations in Geneva, "Situation of Rakhine State and Cooperation with UNSG's Special Advisor" (6 November 2015), available at: https://extranet.ohchr.org/sites/upr/Sessions/23session/Myanmar/Statements/103.1_Closing%20Remarks%20-%201%20-%20Situation%20of%20Rakhine%20State_UPR_Myanmar.pdf the Rohingya and the Kaman through their discriminatory application and to provide more powers to the Tatmadaw. President Thein Sein lifted the state of emergency on 28 March 2016, shortly before handing over power to the newly appointed NLD-led government.[1488]

(c) Inquiry Commission on Sectarian Violence in Rakhine State

688. On 17 August 2012, the President established the Inquiry Commission on Sectarian Violence in Rakhine State".[1489] While it was a positive step that the President set up the Commission, the composition of the Commission as well as the way it executed its mandate were fundamentally flawed. The Commission was initially composed of 27 members, including six Muslims, but did not include a single Rohingya. Two out of the six Muslim members were expelled from the Commission[1490], reportedly because of their overly independent stand on some issues.[1491] The Commission also included members who held strong public anti-Rohingya stands, such as Dr. Aye Maung, the Chair of the Rakhine Nationalities Democratic Party (RNDP), and U Ko Ko Gyi, one of the leaders of the 88 Generation Students Group.[1492] The Chair of the Commission was Dr. Myo Myint, former Director-General at the Ministry of Religious Affairs; concerns were expressed to the Mission about his lack of independence.[1493] The Commission published its report on 8 July 2013.[1494] The Mission welcomes the fact that some parts of the report seek to reflect the perspectives of both communities on the violence. However, the report contains fundamental flaws that undermine its credibility.[1495]

(d) Displacement camps and sites

689. As of July 2013, about 140,000 people (Rohingya, Rakhine, Kaman and Maramagyi) were displaced in Rakhine State as a result of the 2012 violence. They initially lived in 76 displacement camps and sites.[1496] Another 36,000 people were considered as "people in humanitarian need" having been adversely affected by the violence but without having been displaced. The displacement camps and sites were located across Rakhine State (see details in the map below).[1497] About 95 per cent of those who were displaced in 2012-13 were Muslims, the great majority of them Rohingya, and the remaining five per cent were ethnic Rakhine and Maramagyi.[1498]

[1488] Announcement on the lifting of the state of emergency available at: http://www.moi.gov.mm/[illegible]/?q=news/29/03/2016/id-6792

[1489] The New Light of Myanmar, "Investigation Commission formed" (18 August 2012).

[1490] Haji U Nyunt Maung Shein and U Tin Maung Than.

[1491] [illegible]

[1492] See also Chapter [illegible] section [illegible] 3: Spreading hate.

[1493] [illegible]

[1494] Inquiry Commission on Sectarian Violence in Rakhine State, *Final report* (July 2013).

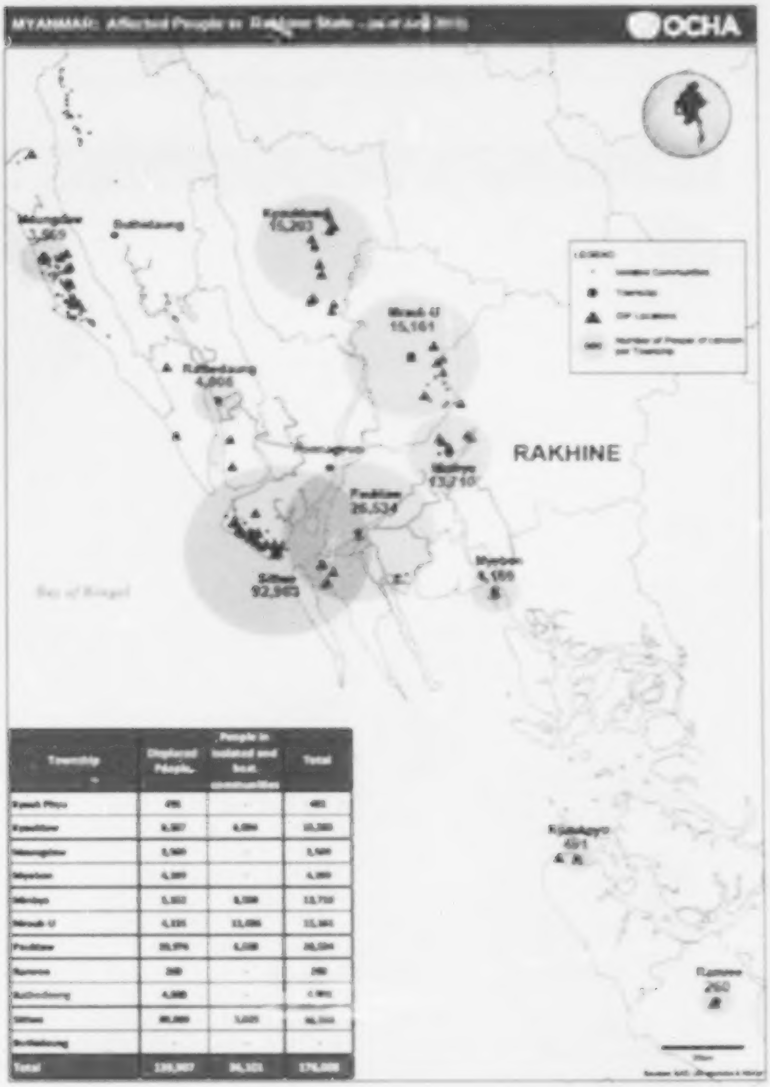
[1495] See chapter V, section B.2: Case study 2: violence and oppression in Rakhine State.

[1496] Approximately [illegible] people were displaced in the June 2012 violence, and the rest as a result of the October 2012 violence.

[1497] United Nations, *Rakhine Response Plan (Myanmar) – July 2012 – December 2013*, p. 4

[1498] [illegible]

OCHA map of June 2013 showing the populatino affected by the 2012 violence in Rakhine State

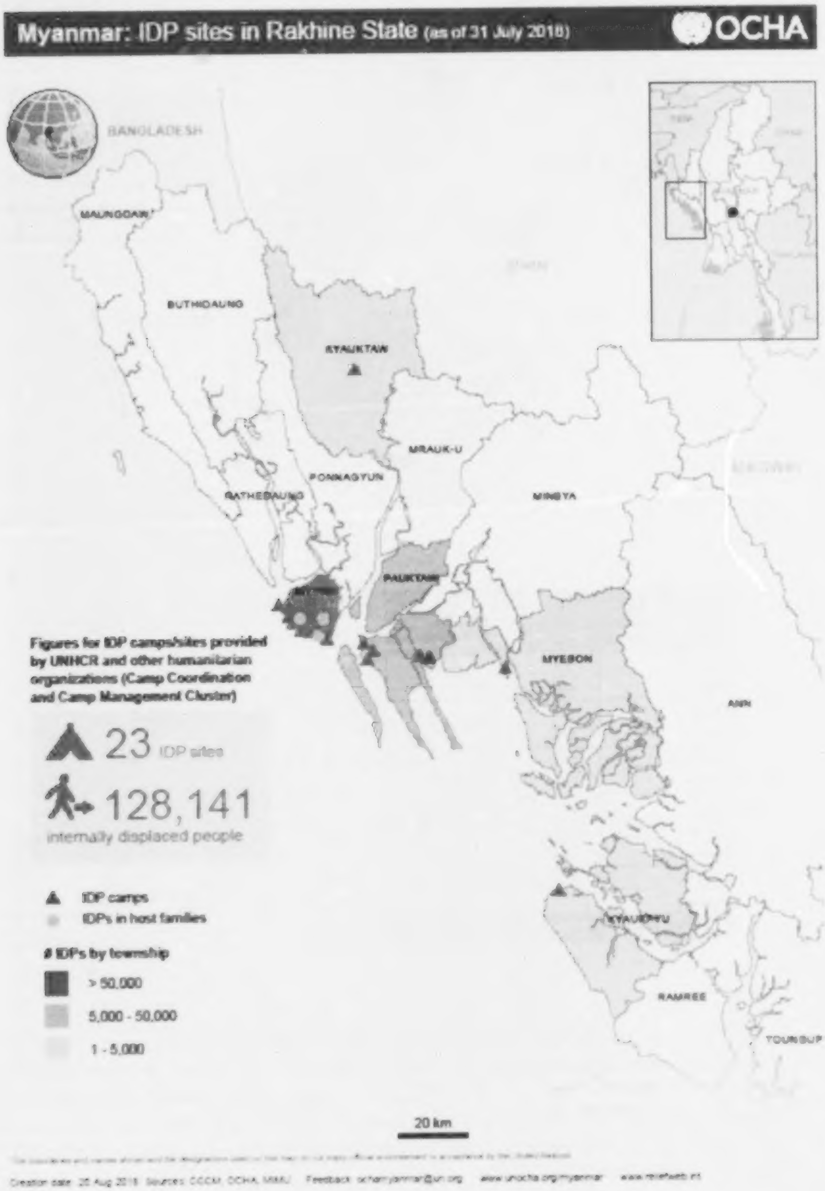

MYANMAR: Affected People in Rakhine State
OCHA
Maungdaw
3,569
Buthidaung
Kyauktaw
10,203
Mrauk-U
15,161
Rathedaung
Ponnagyun
Minbya
13,710
RAKHINE
Pauktaw
26,534
Sittwe
92,983
Myebon
Kyaukpyu
491
Ramree
260
Bay of Bengal
Township
Displaced People
People in isolated and host communities
Total
Total

690. By mid-2013, about 20 displacement sites in Sittwe and Maungdaw had closed. These were small sites, such as monasteries, where mostly ethnic Rakhine people had stayed for a short period. By the end of 2015, approximately 25,000 displaced people, including most of the Rakhine, had been assisted to return to their homes or to resettle, with individual housing assistance provided by the Rakhine State Government with support from the international community.[1499]

[1499] K-069

691. As of 31 July 2018, 128,000 people – mainly Rohingya along with a small number of Kaman – still remained in 23 displacement camps and sites across central Rakhine State.[1500] They have not been allowed to return to their places of origin, and have been confined with severe restrictions on their freedom of movement. The majority of the displaced live in a large area on the outskirts of Sittwe town (see details in the map below).

OCHA map of July 2018 showing the displaced population in Rakhine State


Myanmar: IDP sites in Rakhine State (as of 31 July 2018)
OCHA
BANGLADESH
MAUNGDAW
BUTHIDAUNG
KYAUKTAW
CHIN
MRAUK-U
PONNAGYUN
RATHEDAUNG
MINBYA
MAGWAY
PAUKTAW
MYEBON
ANN
KYAUKPYU
RAMREE
TOUNGUP
Figures for IDP camps/sites provided by UNHCR and other humanitarian organizations (Camp Coordination and Camp Management Cluster)
23 IDP sites
128,141 internally displaced people
IDP camps
IDPs in host families
# IDPs by township
> 50,000
5,000 - 50,000
1 - 5,000
20 km
Creation date: 20 Aug 2018 Sources: CCCM, OCHA, MIMU Feedback: ochamyanmar@un.org www.unocha.org/myanmar www.reliefweb.int

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[1500] OCHA, "Myanmar: IDP Sites in Rakhine State - as of 31 July 2018" (20 August 2018).

692. The camps in Rakhine State do not meet international standards for long-term camp populations. Moreover, as highlighted above, the Mission considers that the holding of Rohingya and Kaman in these camps and sites since 2012 constitutes an arbitrary and discriminatory deprivation of their liberty.[1501]

693. According to credible reports, when the camps were established, the authorities decided on their location and stated that they would not be permanent.[1502] However, six years later, little has changed, with no indication that the situation will be resolved in the foreseeable future. The displaced population is heavily dependent on humanitarian assistance. The humanitarian community faces multiple challenges in seeking to improve conditions in the camps. Most of the displaced live in over-crowded long-houses with inadequate privacy and restrictions on access to livelihoods, health and education. 4,000 people displaced in the Nget Chaung 2 camp in Pauktaw Township live in muddy, wet, unsanitary conditions because the camp is located on low-lying land, which is continuously flooded.[1503] During her visit in April 2018, the United Nations Assistant Secretary-General for Humanitarian Affairs described the conditions in the camps as "beyond the dignity of any people".[1504]

694. In its interim report of March 2017, the Advisory Commission on Rakhine State (the Advisory Commission) recommended that the Government prepares a comprehensive strategy towards the closure of all the IDP camps "through a consultation process with affected communities".[1505] As a "first step and sign of goodwill", the Commission called for the return and relocation of displaced people from three locations in Ramree, Pauktaw and Kyaukpyu. The Government claimed in May 2017 to have achieved this. However, while it successfully moved ethnic Rakhine from Kyaukpyu to a relocation site within Rakhine State, 55 Kaman households were relocated from Ramree to Yangon. They were told that they would not be allowed to return to their places of origin and were given small financial incentives. Furthermore, rather than returning the Rohingya from Kyein Ni Pyin camp (Pauktaw) to their places of origin, or offering them a durable solution elsewhere, the Government built individual houses on their displacement site.[1506] Similarly, the Government's pilot project to start closing the remaining displacement camps in Rakhine State, announced on 2 January 2018, is highly unsatisfactory.[1507] According to credible reports, instead of closing the 10 camps in the pilot project, and returning the displaced to their places of origin or relocating them, the intention is to convert some of the displacement camps into villages. This goes against the wish, expressed by the majority of the displaced, to return to their places of origin, often located in urban centres.[1508] It is also contrary to the final recommendations of the Advisory Commission. Implementation of these plans, as with Kyein Ni Pyin, will further entrench marginalization, segregation and confinement.

695. The Mission is extremely concerned about the protracted confinement of Rohingya and Kaman communities in these camps and sites, which has a devastating impact on the human rights of these individuals. It urges the Myanmar authorities to resolve the situation urgently in line with the United Nations Guiding Principles on Internal Displacement. Its principle 28 underscores the primary duty and responsibility of the competent authorities to establish conditions, as well as provide the means, which allow displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily to another part of the country. It further stipulates that authorities shall

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[1501] See this chapter, section B.2.f. Conclusion.

[1502] K-069.1

[1503] K-069.1

[1504] See video: https://twitter.com/uschimuller/status/981625075953782784?lang=fr

[1505] Advisory Commission on Rakhine State, *Interim Report and Recommendations* (March 2017), p. 12-13

[1506] Inquiry Commission on Sectarian Violence in Rakhine State, *Final report* (July 2013), p. 35, K-063

[1507] The Global New Light of Myanmar, "Meeting on IDP camps, freedom of movement matters held in Rakhine State" (3 January 2018); Statement by the Office of the State Counsellor on the Final Report of the Advisory Commission on Rakhine State (24 August 2017).

[1508] K-063, K-069.1.

endeavour to facilitate the reintegration of returnees, and that special efforts should be made to ensure the full participation of the affected persons in the planning and management of their return.

5. Spreading hate

(a) Inciting anti-Rohingya sentiment

696. The Mission has examined documents, publications, statements, Facebook posts and audio-visual materials that have contributed to shaping public opinion on the Rohingya and Muslims more generally. The analysis demonstrates that a carefully crafted hate campaign has developed a negative perception of Muslims among the broad population in Myanmar. This campaign has been the work of a few key players: nationalistic political parties and politicians, leading monks, academics, prominent individuals and members of the Government. This hate campaign, which continues to the present day, portrays the Rohingya and other Muslims as an existential threat to Myanmar and to Buddhism.[1509] In the case of the Rohingya, it has gone a step further. It is accompanied by dehumanising language and the branding of the entire community as "illegal Bengali immigrants". This discourse created a conducive environment for the 2012 and 2013 anti-Muslim violence in Rakhine State and beyond, without strong opposition from the general population. It also enabled the hardening of repressive measures against the Rohingya and Kaman in Rakhine State and subsequent waves of State-led violence in 2016 and 2017.

697. Anti-Muslim campaigns are not a recent phenomenon in Myanmar. A book published in the 1980s by an anonymous author, spells out a series of anti-Muslim concepts and admonitions that would resurface and gain traction 20 and 30 years later. Entitled "Fear of extinction of the race", the book presents Islam as a serious threat to Buddhism and calls on people to "protect their race and religion". It states that Buddhist women are particularly vulnerable and that children should be taught not to be friendly with people of other religions. The book also calls the readers not to do business with Muslims (referred to by the derogatory term "Kalars"[1510]) and states that, "it is certain that in 100 years, the glorious Buddhism along with Myanmar ethnic people will disappear completely". It also calls for a boycott of Muslim shops ("… buying from them is like watering poisonous plants …") and states:

> *If we are not careful, it is certain that the whole country will be swallowed by the Muslim Kalars (…). When we study world-history, we can see that different races of the world did not get swallowed to extinction by the earth, but only by other humans.*[1511]

698. This book was published close to the adoption of the discriminatory 1982 Citizenship Law. According to credible reports, it was initially banned by the military Government but was later distributed either in full or in shorter anti-Muslim pamphlets.[1512] In 2001, violence broke out in Taungoo (Pegu division), reportedly after the distribution of these pamphlets by the Union Solidarity and Development Association, which later became the Union Solidarity and Development Party (USDP), established in 2010 by former senior military officers. The violence reportedly left around 200 Muslims dead, mosques destroyed and houses burned.[1513] The main narrative of the book and the calls for boycotts of Muslim businesses were amplified by the 969 movement in 2012 and later by MaBaTha.[1514] More generally, the idea that there is risk for one race to extinguish another

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[1509] See chapter VI, section B.2: Findings on the issue of hate speech.

[1510] The word "Kalar" is used as a racist slur to insult and highlight someone's dark skin or foreign ancestry.

[1511] K-112. Unofficial translation of *A Myo Pyaut Mhar Soe Kyaut Sayar*.

[1512] K-111.

[1513] K-111.

[1514] For a brief description of 969 and MaBaTha, see chapter III, section B.2: Place of Buddhism in society.

can be found in the motto of the Ministry of Immigration and Population, now the Ministry of Labour, Immigration and Population:

> *The earth will not swallow a race to extinction but another race will.*

699. The Ministry has had this motto since its establishment in 1995 but some reports trace it back to the first military dictator, General Ne Win, around 1962. Credible reports indicate that until recently this motto was displayed prominently on billboards and in offices.[1515] Although this motto now appears to be less prominent, it is still featured on the Ministry's website. On 26 August 2011, during a discussion in the lower house of Parliament about the issuance of white cards to the Rohingya, the then Minister of Immigration stated: "Our Ministry is trying its best to uphold the slogan 'Race is not swallowed by the earth but by another race'".[1516]

700. Another influential publication in relation to the hate narrative against the Rohingya is the book *Influx viruses – The illegal Muslims in Arakan* by U Shwe Zan and Dr. Aye Chan, published in the United States in August 2005.[1517] The title and content of the publication refer to the Rohingya in an offensive and degrading manner, with a stark difference between the English and Myanmar language sections. The latter refer to the Rohingya as "hairy with long beards" and to "Bengali Kalars … swallowing other races". Similar patterns are seen with the *Paccima zone* magazine, where the English content – some of which was also authored by Dr. Aye Chan – was drafted in a very different tone and style to the Myanmar language content, possibly in an attempt to project a more acceptable image to the international community.

701. Several interlocutors informed the Mission that the publication of the *Paccima zone* magazine in February 2012 marked a turning point in the targeted campaign of hate and hostility against the Rohingya in Rakhine State.[1518] The first volume of the magazine includes a foreword drafted by the Maungdaw District Administrator. It also lists some of the most senior State officials and police chiefs from Maungdaw and Buthidaung Townships as "patrons" and "committee members" and includes the names and pictures of monks who were "consultants".[1519]

702. The magazine includes one section containing a series of anti-Rohingya articles written with provocative titles such as "Black tsunami in a pitiful disguise" or "Slow invasion". Articles present the entire Rohingya population as terrorists; assert that the term "Rohingya" was invented to take over the land; make reference to a "Rohingya invasion"; challenge the claim that the Rohingya suffer human rights violations; portray the Rohingya as perpetrators of serious abuses; and accuse the international community of believing "Rohingya lies" and in prioritising Maungdaw and Buthidaung over other parts of Rakhine State. In one article, the Rohingya are referred to as the "common enemy" of all the ethnic groups in Myanmar.[1520] Another article, "What the Rohingya is", states:

[1515] V-240.

[1516] Pyithu Hluttaw, "Question from U Thein Nyunt of Thingankyun Constituency, on whether the Union Government was aware of the fact that the Township Immigration Offices incurred arbitrary delays for people of Islamic faith to go through the nationality verification process, to obtain household list and birth certificates, as answered by the Minister of Immigration and Population, U Khin Yi" (26 August 2011), available at: https://pyithu.hluttaw.mm/question-2747.

[1517] K-112. The first author used to be an immigration officer in Rakhine State, while the second author is a Rakhine historian and professor at Kanda University of International Studies in Japan. He is currently the Chair of the "Ancillary Committee for Reconstruction of Rakhine National Territory in the Western Frontier", a body set up after the 25 August 2017 attacks.

[1518] Paccima zone magazine, volume 1. On file with the Mission (K-112). "Paccima zone" refers to the Maungdaw-Buthidaung region.

[1519] Maungdaw District Administrator; Chief of Maungdaw District Police Force; Maungdaw District Planner; Buthidaung Township Administrator; Chief of Buthidaung Township Police Force; Chief of Buthidaung Township Planning Administration, and the Administrator of GAD for Buthidaung Township.

[1520] Paccima zone magazine, volume 1, "Local people's view on the so-called Rohingya" (February 2012), pp. 60-61.

> *What the Rohingya is, is the latest weapon of the religious extremist terrorists... they are trying their very best to steal the land. Current actions of the Muslim extremists are extremely frightful.*[1521]

703. The presence of key northern Rakhine State officials in the editorial board indicates that these articles had their backing or at least their tacit approval. It gives an indication of the attitude of State officials towards the Rohingya shortly ahead of the 2012 violence. The themes covered in the magazine were amplified and used more systematically to cultivate the hate environment against the Rohingya prior to and after the commencement of the violence.

704. On 29 May 2012, seven days before the report in the New Light of Myanmar, the Narinjara newspaper published an article about the murder of Ma Thida Htwe the previous day, and referred to it as the "worst homicide case in Myanmar". Quoting a police officer, the article stated that the woman was raped by "Kalars". This article was republished in the Arakan Independent Bulletin with a graphic picture of her dead body. The author called on all the ethnic Rakhine to be united when dealing with the Rohingya issue.[1522]

705. On 1 June 2012 – three days after the murder of Ma Thida Htwe and two days before the killing of the 10 Muslims in Toungup – Zaw Htay, the spokesperson of the President of Myanmar, posted a statement on his personal Facebook account. He warned about the arrival from abroad of "Rohingya terrorists" from the Rohingya Solidarity Organization (RSO) and stated that the Myanmar troops would "completely destroy them":

> *Rohingya terrorists as members of the RSO are crossing the border into Myanmar with weapons. ... Our troops have received the news in advance so they will completely destroy them [the Rohingya]. It can be assumed that the troops are already destroying them [the Rohingya]. We don't want to hear any humanitarian or human rights excuses. We don't want to hear your moral superiority, or so-called peace and loving kindness. (Go and look at Buthidaung, Maungdaw areas in Rakhine State. Our ethnic people are in constant fear in their own land. I feel very bitter about this. This is our country. This is our land.) (I'm talking to you, national parties, MPs, civil societies, who are always opposing the President and the Government.)*[1523]

706. Although this post was later deleted, the impact of a high official equating the Rohingya population with terrorism may have been significant ahead of the 2012 violence, which erupted a week later.

707. On 8 June 2012, the newspaper Eleven Media – one of the most widely read publications in Myanmar – reported on the violence that took place that day in Maungdaw. Under the title "Curfew imposed in Rakhine Township amidst Rohingya terrorist attacks", it attributed the violence exclusively to "Rohingya terrorist attacks" and made no mention of the violence carried out by ethnic Rakhine and security forces against the Rohingya. [1524]

708. Both the Rakhine Nationalities Development Party (RNDP) and the 88 Generation Students group made anti-Rohingya statements in two articles published by Eleven Media. These quotes went far beyond the specific events that took place in Maungdaw on 8 June 2012. The RNDP statement was reported as being made as early as 4.15 pm on 8 June, only about three hours after the beginning of the violence. It labelled the violence as "terrorist attacks" and stressed the fact that the Rohingya were not among the 135 recognised ethnic groups in Myanmar:

[1521] San Shwe Maung, "What the Rohingya is" (Paccima zone magazine, volume 1, February 2012) pp. 30-32.

[1522] Arakan Independent Bulletin, Issue 4, No. 11 (May 2012), pages 3-6.

[1523] V-247.

[1524] Eleven Media, "Curfew imposed in Rakhine township amidst Rohingya terrorist attacks" (8 June 2012), available at: http://aboutarakaneng.blogspot.com/2012/06/curfew-imposed-in-rakhine-township.html

> *Rohingyas are not the national ethnics. As successive government officials favoured and issued them national registration cards by taking briberies, they are acting as the over-indulgent persons. Due to the control of Rakhine ethnics, they could not widely spread until now. The prevailing attacks mean insulting the hosts by the guests. This is a terrorist attack.*[1525]

709. On the same day, Eleven Media also published a statement of Dr. Aye Maung, the Chair of the RNDP, in which he drew parallels between the violence in Maungdaw on 8 June 2012 and the 1942 violence when more than 60,000 Rohingya and ethnic Rakhine are believed to have been killed in inter-communal violence during the Second World War.[1526] He referred to "attacks that seriously threaten the Arakanese people" and called for the establishment of paramilitary forces in Rakhine and Shan States. He went on to state that "the persons behind the curtain", presumably alleging that Rohingya groups have instigated the violence, will be "responsible for the consequences".[1527]

710. The 88 Generation Students group made similar statements, with Ko Mya Aye, a prominent leader of the group and former political prisoner, quoted as describing the incident as a "terrorist attack", referring to "infiltrations" by "illegal migrants", and calling for a "firm and solid immigration law" in response. The article also quoted Ko Ko Gyi, another prominent member of the 88 Generation Students group and former political prisoner, as stating that the Rohingya were not a Myanmar ethnic race and that this incident might "threaten the sovereignty of the State".[1528]

711. On 25 June 2012, Eleven Media published an op-ed by its editor-in-chief warning about the "risk and danger of ethnic cleansing or genocide", as a result of the threat posed by the Rohingya. It claimed that swift action had save(d) "the lives of the Rakhine nationals from being attack of genocide".[1529]

712. On 11 July 2012, President Thein Sein held a meeting in Naypyidaw with Mr. Antonio Guterres, then United Nations High Commissioner for Refugees. During this meeting, the President referred to "illegal migrants" who "sneaked into" Myanmar and "later took the name Rohingya". He stated that he could not take responsibility for them and that they should either be sent to IDP camps and be supported by UNHCR, or be sent to a third country.[1530] A depiction of this nature by Myanmar's highest official further stigmatised the Rohingya in an already tense climate.

713. From mid-June 2012, various groups, including the RNDP, the All Rakhine Refugee Committee, the Wunthanu Rakhita Association and Buddhist monks' associations, such as the Arakanese Youth Monk's Association, stepped up activities that served to incite the population in Rakhine State against the Rohingya. They included increasingly extreme calls to the Rakhine population to act, and other provocative statements, with a common theme of the perceived threat represented by the Rohingya and the need to sever ties between communities.[1531] For example, on 26 June 2012, the RNDP warned against the threat of the "present population of Bengali" and called for a "final solution". One of the recommendations of the RNDP was to "relocate the non-Myanmar national Bengali to a

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[1525] Eleven Media, "Curfew imposed in Rakhine township amidst Rohingya terrorist attacks" (8 June 2012), available at: http://aboutarakaneng.blogspot.com/2012/06/curfew-imposed-in-rakhine-township.html

[1526] See for a study on the 1942 events: J. Leider, "Conflict and Mass violence in Arakan (Rakhine State) – The 1942 Events and Political Identity Formation", in *Citizenship in Myanmar*, A. South, M. Lall (eds.), (Chiang Mai University Press, 2018), pp. 193-221, noting that "the waves of communal clashes of 1942 have been poorly documented, sparsely investigated and rarely studied" (p. 194) and that "the absence of a factual master narrative, which both Buddhists and Muslims could have agreed upon, barred the emergence of consensual interpretations of the events" (p. 211).

[1527] Eleven Media, "Curfew imposed in Rakhine township amidst Rohingya terrorist attacks" (8 June 2012), available at: http://aboutarakaneng.blogspot.com/2012/06/curfew-imposed-in-rakhine-township.html

[1528] Ibid.

[1529] Than Htut Aung, "I will tell the real truth" (Eleven, 25 June 2012).

[1530] V-243.

[1531] K-112.

third country".[1532] The RNDP also praised Hitler and argued that inhuman acts were sometimes necessary to maintain a race. In a November 2012 publication, it identified a collective need to take "a decisive stand on the issue of Bengali Muslims". It went on, "if we do not courageously solve these problems, which we have inherited from several previous generations, and instead hand them over to the next generation, we will go down in history as irresponsible":

> *Although Hitler and Eichmann were the greatest enemies of the Jews, they were probably heroes to the Germans. America had to drop nuclear bombs on Hiroshima and Nagasaki. Why? If inhumane acts are sometimes permitted to maintain a race, a country and the sovereignty... our endeavours to maintain the Rakhine race and the sovereignty and longevity of the Union of Myanmar cannot be labelled as inhumane.*[1533]

714. In July 2012, a group of monks published a statement calling on the ethnic Rakhine to implement a "great plan of staying away from bad Bengali (Kalar)" to prevent a "Rakhine ethnic cleaning programme". The statement called on ethnic Rakhine not to employ Rohingya and not to trade with them. In October, a conference of monks concluded that there was a need to "expose sympathisers of Bengali Kalars as national traitors along with photos and to spread the information to every township".[1534]

715. In August 2012, a blog called "Terrorist 2012" published a poem called "To Thida Htwe, record written in blood, oath declared in blood".[1535] In 2016, the MaBaTha released a video re-enacting the murder of Ma Thida Htwe and including a background song with similar lyrics. The video was widely circulated on CDs and other formats.[1536]

716. Specific efforts were also made to sow fear and hatred against the Rohingya among new recruits to the Tatmadaw. In October 2012, soldiers reportedly received specific training at the Naypyidaw Divisional Military Headquarters on the "expansion of Islam" and the "extinction of Buddhism". A presentation titled "Fear of extinction of the race" echoed some of the main anti-Muslim themes of the book published 30 years before. It concluded with the need to "protect our race and religion as much as possible". [1537]

(b) Inciting negative sentiments against the international community

717. Following the 2012 violence, the operating conditions for international organizations in Rakhine State deteriorated severely. Humanitarian organizations assisting Rohingya communities faced extreme hostility or even violence. This took place regardless of whether they also assisted ethnic Rakhine. Rumours were spread that the Rohingya were being unfairly prioritised for humanitarian assistance over the ethnic Rakhine. This translated into hostility against international organizations.[1538] This hostility was already prevalent in northern Rakhine State prior to the 2012 violence but afterwards, with the support given to displacement camps and sites in central Rakhine, it became more apparent in central Rakhine also. Again, it was fuelled by nationalist groups, political parties and monks. For example, the Group of Wunthanu Ethnic People circulated a letter accusing the United Nations and international organizations of "watering poisonous plants", using a recurrent analogy.[1539] The letter labelled nine leading international organizations as "traitors" for assisting the Rohingya. The group also warned landlords against renting properties to organizations assisting the Rohingya.[1540]

[1532] V-242.

[1533] RNDP, *Toe Thet Yay* Journal, vol. 2(12) (November 2012).

[1534] K-112.

[1535] http://terrorist2012.blogspot.com/2012/08/blog-post.html.

[1536] Facebook posts with the video have since been deleted. A copy is on file with the Mission (V-234).

[1537] K-106.3.

[1538] A/69/398.

[1539] Analogy originally used in the book *Fear of extinction of the race* in the 1980s. See this chapter, section C.5: Spreading hate.

[1540] On file with the Mission (K-112).

718. This narrative was also spread by some government officials. In late February 2014, an international organization, one of the main health care providers in northern Rakhine State, was ordered to cease operations throughout Myanmar, shortly after releasing a statement on reported killings in Du Chee Yar Tan, Maungdaw Township.[1541] The Presidential spokesperson reportedly said it was "giving Bengalis preferential treatment".[1542] The organization was not permitted to return to Rakhine State until December 2014.[1543] This left many beneficiaries, particularly in the north of Rakhine State, without access to vital, and in some cases life-saving, health services.

719. On 26 and 27 March 2014, in the lead up to the national census,[1544] the premises of more than 30 United Nations and other international organizations in Sittwe were attacked by large groups of ethnic Rakhine. There was extensive looting and destruction of property.[1545] A stray bullet from the security forces engaged in crowd control reportedly struck and killed an ethnic Rakhine child.[1546] Around 300 humanitarian staff members were temporarily evacuated and most humanitarian activities ceased for four weeks. The dominant narrative is that the violence was sparked by reports that a Buddhist flag, hung in opposition to the census, had been removed by a humanitarian worker from outside her house.[1547] However, credible reports indicate that the violence was coordinated and pre-planned.[1548] Shortly afterwards, on 29 March 2014, the Government reneged on an explicit commitment to allow the Rohingya to self-identify in the census.

720. These incidents had a significant impact on the provision of services to both communities, but particularly to the Rohingya. By June 2014, the capacity of the humanitarian community was only 60 per cent of what it was before March 2014,[1549] leaving populations in need without access to vital services for a prolonged period.

721. During this period, the Government also reportedly started to require that the Rohingya and ethnic Rakhine communities each receive 50 per cent of any assistance, regardless of humanitarian need.[1550] The Emergency Coordination Center (ECC), a body intended to facilitate humanitarian activities in Rakhine State, was expanded to include local Rakhine community leaders alongside the original membership of the authorities and police.[1551] The delay in resumption of humanitarian operations appears to have been at least to some extent due to the ECC.[1552] The ECC also appears to have taken on a monitoring function, to ensure "balanced" distribution of aid.[1553]

722. Ethnic Rakhine national staff of international organizations faced threats and intimidation from their community and reported feeling like traitors for continuing their work.[1554] International staff faced harassment in the streets and in some cases threats.[1555]

723. Successive United Nations Special Rapporteurs on the situation of human rights in Myanmar were met with protests and in some cases faced threats. In August 2013, then Special Rapporteur Thomas Quintana was surrounded with demonstrators, some of whom punched and kicked the doors of vehicles in his convoy when he attempted to visit Meiktila

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[1541] In January 2014, the United Nations High Commissioner for Human Rights issued a press release calling on the Government to investigate credible reports that more than 40 Rohingya had been killed in Du Chee Yar Tan between 9 and 13 January 2014. The Government strongly denied these allegations.

[1542] V-053, V-333.

[1543] V-335.

[1544] See this chapter, introduction.

[1545] K-069.9; V-337.

[1546] V-338.

[1547] Ibid, V-339.

[1548] K-069.10; V-168, V-337.

[1549] V-340.

[1550] V-169.

[1551] K-069.11.

[1552] K-069.12.

[1553] V-169.

[1554] K-069.11.

[1555] V-341.

(Mandalay Region) after the violent attacks against the Muslim community.[1556] In January 2015, during a public rally promoting the "Race and Religion" bills,[1557] Ashin Wirathu called the current Special Rapporteur, Yanghee Lee, a "bitch" and a "whore".[1558] He later threatened her with violence in response to her report to the United Nations Human Rights Council.[1559]According to credible reports, there have been instances where ultra-nationalist ethnic Rakhine individuals or organizations have prevented international organizations from delivering aid to Rohingya communities or transferring those in need of medical care to hospitals.[1560]

6. Overall analysis

(a) Relationships between communities before the 2012 violence

724. The problems in Rakhine State are often ascribed to poor relations between the Rohingya and the ethnic Rakhine, reflective of deeply-rooted grievances and prejudices. Yet, the majority of Rohingya and Rakhine interviewed by the Mission on this topic indicated that their relationship with the other community before the 2012 violence was good[1561] or very good.[1562] Others stated that there were "no problems" or "no tension" before 2012.[1563] Some mentioned having friends from the other community, engaging in various business dealings, studying together, visiting each other's houses or even celebrating each other's festivals. Some Rakhine interviewees stated they had no interaction with the Rohingya, as there were no Rohingya in or near their villages.[1564]

725. One ethnic Rakhine from Maungdaw stated that he had many Muslim friends but mistrust grew between the two communities after the 2012 violence.[1565]Another Rakhine from Kyaukpyu, who left Myanmar after the 2012 violence, said:

> *The relation between Rakhine and Rohingya was peaceful until I left Myanmar. Rakhine do not have any problem with the Muslims. The problem is with the repression by the military.*[1566]

726. One Rohingya from Maungdaw town said:

> *Before the 2012 violence, the relationship between the Buddhists and the Muslims was good. We had no problems. We went to their houses and they came to ours. Even in the monastery we had good relationships. We used to exchange food for Muslim and Buddhist festivals. I used to go to the monastery compound nearby and play football with the young monks.*[1567]

727. Some Rohingya expressed negative feelings against the way ethnic Rakhine treated them at school or at university. A few interviewees did speak about difficulties with their Rakhine neighbours before the 2012 violence.[1568] However, after the 2012 violence, the

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[1556] V-168; Tomás Ojea Quintana, "Statement of the Special Rapporteur on the situation of human rights in Myanmar" (21 August 2013), available at: http://yangon.sites.unicnetwork.org/2013/08/21/statement-of-the-special-rapporteur-on-the-situation-of-human-rights-in-myanmar-2/

[1557] See this chapter, section B.5.b: Restrictions related to marriage and child.

[1558] Video available on youtube at: https://www.youtube.com/watch?v=comAfSalvEY

[1559] Yanghee Lee, "Statement of the Special Rapporteur on the situation of human rights in Myanmar at the 28th session of the Human Rights Council" (16 March 2015), available at https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15713&LangID=E

[1560] V-343, V-344.

[1561] CI-057, CI-062, CI-063, CI-064, CI-082, CI-083, CI-086, CI-091, CI-097, CI-154, CI-155, CI-162, DI-003, DI-017, DI-047, DI-051, DI-053, DI-073, QI-072, QI-073, QI-075, QI-076.

[1562] CI-065, CI-085, CI-088, CI-158, CI-159, CI-173, CI-175, DI-022, DI-023, DI-075, QI-105

[1563] CI-153, CI-157, DI-014, DI-019, DI-031, DI-055, DM-002.

[1564] DI-018, DI-028, DI-029, DI-030, DI-032, DI-033, QI-074.

[1565] CI-158.

[1566] CI-154.

[1567] DI-073.

[1568] DI-001, DI-004, DI-020.

relationship between the ethnic Rakhine and the Rohingya communities seriously deteriorated.[1569] Many interactions between the communities stopped or were significantly reduced, either out of fear or because of the policy of segregation imposed in central Rakhine.[1570]

(b) Pre-planning, instigation and role of security forces

728. The Government's portrayal of the 2012 violence as "intercommunal" between the Rohingya and Rakhine has prevailed but is inaccurate. While there certainly was violence between Rohingya and Rakhine groups, resulting in killing and destruction of property, these attacks were not spontaneous outbursts of hostility. They resulted from a plan to instigate violence and build tensions. This was facilitated and amplified by the hate campaign that started in February 2012 and intensified significantly after 28 May 2012.[1571] Myanmar security forces failed to stop the violence and often actively participated.

Distribution of pamphlets inciting ethnic Rakhine

729. According to credible information, incendiary letters or pamphlets were distributed to ethnic Rakhine before some of the incidents. In Sittwe, a few days before the violence in June 2012, pamphlets were reportedly received by members of the ethnic Rakhine community[1572] requesting each household to send at least one person to participate in planned attacks on Rohingya neighbourhoods, while others were asked to remain behind to defend their village in case of retaliatory attacks. One credible report quotes Rohingya interviewees stating that before the violence they saw pamphlets being distributed to Rakhine houses by people on motorbikes. They realised that something was happening but even close Rakhine friends would not tell them what the pamphlets said.[1573]An interviewee from the town of Ramree, which also saw significant violence in June 2012, referred to pamphlets stating that Muslims should not be allowed in Myanmar. He was warned by one of his Rakhine friends that some of the Rakhine were planning to attack Muslims and destroy his village.[1574]

Transportation of ethnic Rakhine and distribution of weapons

730. Ethnic Rakhine were transported in groups ahead of the violence and weapons were also distributed. According to credible reports, in June 2012, groups of Rakhine were brought to Sittwe downtown on boats and buses.[1575] As they were waiting next to the bus, they were reportedly given sticks and machetes.[1576] Another report states that before one of the attacks, men on motorbikes had allegedly driven around shouting that the attack would take place at 2 pm, as later transpired.[1577] Similarly, one Kaman interviewee from Kyaukpyu told the Mission that, ahead of the violence in Paik Seik on 25 October 2012, he saw members of the RNDP distributing alcohol, machetes and knives to the ethnic Rakhine, in the presence of security forces.[1578]

731. One interviewee, who lived in Shikdar hamlet, near the entrance of Maungdaw town, witnessed the arrival at various monasteries of a large number of ethnic Rakhine who she did not recognise, reportedly in military vehicles.[1579] Similarly, another interviewee described how, on 8 June 2012, she saw Tatmadaw soldiers collect ethnic Rakhine and their

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[1569] CI-086, CI-158, CI-159, CI-160, CI-162, CI-163, DI-022, DI-023, DI-047, DI-051, DI-075, QI-105.

[1570] See this chapter, section B.2.d: Specific restrictions in central Rakhine State.

[1571] See this chapter, section C.5: Spreading hate.

[1572] K-114, K-076.9.20, K-076.9.24.

[1573] K-076.9.24.

[1574] CI-171.

[1575] K-076.9.18, K-114, V-168.

[1576] V-168.

[1577] K-076.17.

[1578] CI-165.

[1579] DI-026.

valuables in their vehicles, reportedly to protect them from the burning of houses that took place soon after.[1580]

732. The simultaneous nature of many of the incidents further indicates pre-planning. The initial violence in Maungdaw on 8 June 2012 was followed within 12 hours by a significant outbreak of violence in Sittwe, some 60 kilometres to the south. Similarly, in October 2012, attacks by ethnic Rakhine against Muslims took place almost simultaneously in nine townships across Rakhine State between 21 and 25 October 2012.[1581]

Involvement of local officials and security forces

733. State actors, including village administrators and members of the security forces, were involved significantly in the violence. The security forces actively participated in violence or failed to stop it.[1582] For example, on 10 June 2012, security forces stood aside and watched as an ethnic Rakhine mob burned Kaman houses in Ramree.[1583] The police and Tatmadaw had the capacity to intervene and halt the violence but chose not to do so. In October 2012, while Rakhine State was under a state of emergency, interviewees stated that, when they approached district and township officials to seek protection, they were refused assistance.[1584] One interviewee from Kyaukpyu received a similar response from a senior township official in October 2012 in west Paik Seik who told him that the fire engine could not be used to put out the burning houses because no permission had been given by "high officials".[1585] A credible source reported that police and ethnic Rakhine casually stood together during the burning in areas of Kyaukpyu. While the Muslims attempted to extinguish fires, ethnic Rakhine, the security forces and a fire truck all waited idly at the other end of the road.[1586]

734. The Mission also received accounts from both Sittwe and Kyaukpyu of fire brigades - which fall under the authority of the Tatmadaw - actually spreading fires instead of extinguishing them.[1587] One interviewee from Sittwe shared the following account from June 2012:

> *A vehicle came to extinguish the fires. However, when the firefighters spread liquid from the vehicle, I realized that they were spreading petrol and not water. It increased the flames instead of stopping the fire.*[1588]

735. In Kyaukpyu, local government officials were present when ethnic Rakhine were setting houses on fire in October 2012.[1589] Instead of intervening, one official accused Kaman and Rohingya villagers of burning the houses and told them to leave.[1590] Also in Kyaukpyu, security forces, who had been paid by Muslim villagers for weeks to ensure their protection in Paik Seik, left in the morning of 22 October 2012, just a few hours before ethnic Rakhine attacked the area.[1591]

Involvement of monks and political parties

736. Rakhine nationalist political parties and organizations as well as influential monks also played an important role in the violence, through either instigation or direct participation. Monks and members of the Rakhine Nationalities Development Party

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[1580] DI-054.

[1581] V-050.

[1582] See this chapter, section C.1: Emblematic incidents.

[1583] CI-163, CI-171.

[1584] CI-085, CI-165, CI-168, CI-170.

[1585] CI-168.

[1586] V-050.

[1587] CI 083, CI-084, CI-166, CI-168, DI- 021, DI-022; K-109, KI-076.17.

[1588] CI-166; KI-076.17.

[1589] CI-165, CI-168, CI-170.

[1590] CI-085, CI-165, CI-168, CI-170.

[1591] DI-021, DI-024; V-050.

(RNDP) were reportedly involved in the attacks that took place in Sittwe.[1592] More generally, influential Buddhist organizations and the 969 movement appear to have been engaged from the earliest stages in 2012, fuelling anti-Muslim sentiments, instigating ethnic Rakhine to carry out the violence, or directly participating in violence.[1593]

737. In Kyaukpyu, a group of ethnic Rakhine from other areas was reportedly led by a local leader of the 969 group to burn Kaman houses in October 2012.[1594] Similarly, violence that targeted Thandwe's Kaman community in 2013 was instigated and led by members of the 969 movement, with the active or passive support of security forces.[1595] One Kaman interviewee recognised the leader of the 969 group in Thandwe, who was also reportedly connected with the killing of the 10 Muslims in Toungoup on 3 June 2012.[1596] Credible reports also suggest the involvement of the RNDP in inciting ethnic Rakhine before the violence in Kyaukpyu.[1597]

738. Moreover, the Mission received credible reports suggesting linkages between the leadership of 969 and MaBaTha and the Tatmadaw or some members of the Government affiliated with the Tatmadaw.[1598] One report suggests that senior officials approached former leaders of the 2007 "Saffron revolution", upon their release from prison, and encouraged them to join 969 or MaBaTha and offering financial and other incentives to do so. It is reported that some monks refused this, while others, notably Ashin Wirathu, accepted.[1599] Given the important role played by 969 and MaBaTha in fuelling anti-Muslim violence in Myanmar, these allegations are significant and warrant further investigation.

Specific events in Maungdaw

739. Various accounts by Rakhine and Rohingya witnesses suggest that men might have been brought to Maungdaw to participate in the violence[1600] or that the security forces themselves might have been responsible for some of the burning of Rakhine houses in Maungdaw.[1601]

President Thein Sein stating the violence was instigated

740. In a statement issued on 25 October 2012, President Thein Sein himself stated that the violence was being orchestrated by "persons and organizations who are conducting manipulations in the incidents in Rakhine State behind the scene". He promised that perpetrators would be "exposed" and legal action taken against them.[1602] However, no legal action was taken and the President never clarified who were the alleged perpetrators of the instigation. Echoing the above statement, a credible report quoted an anonymous military source in the central government stating that the October 2012 attacks were carefully organized. The military source reportedly accused "Rakhine nationalists with ties to the Rakhine Nationalities Development Party" of leading the mobs, who were "fuelled by Buddhist monks spreading anti-Muslim rhetoric".[1603]A year later, on 3 October 2013, the President once again claimed the violence was being instigated, this time referring to "outsiders" responsible for the violence in Thandwe:

> *Ethnic Rakhine and ethnic Kaman have been living here in peaceful coexistence for many years. External motives instigated violence and conflicts. According to the*

[1592] CI-171, K-114, K-076.9.16, K-076.9.17, K-076.9.20, K-076.9.22, K-076.9.23, K-076.9.32.

[1593] CI-164.

[1594] CI-167.

[1595] CI-164, CI-169.

[1596] CI-164, CI-169.

[1597] CI-165; V-050, V-051.

[1598] DI-011, K-101, K-106, See also C4ADS, *Sticks and Stones - Hate Speech Narratives and Facilitators in Myanmar* (2016).

[1599] DI-011, K-106, DM-002.

[1600] DI-038, DI-045, QI-106.

[1601] CI-153.

[1602] The New Light of Myanmar (26 October 2012).

[1603] V-051.

> *evidence in hand, rioters who set fire to the villages are outsiders. Participation of all is needed to expose and arrest those who got involved in the incident and those instigating the conflict behind the scene. Only then can root cause of the problem be addressed.*[1604]

Similarities with other anti-Muslim violence elsewhere

741. Myanmar experienced other waves of anti-Muslim violence beyond Rakhine State in 2013 and 2014 and included the destruction or burning of mosques. Incidents were reported in the following locations: Yangon town (February 2013), Mandalay and Bago Divisions (March 2013), Oakkan in Yangon Division (April-May 2013), Hpakant in Kachin State (May 2013), Lashio in Shan State (May 2013), Mone in Bago Division (May 2013) and Mandalay town (July 2014).[1605]

742. The Mission did not investigate these incidents. However, given their relevance in understanding the overall dynamics at play in Myanmar in anti-Muslim violence, it examined credible accounts that indicate many of these incidents were pre-planned and instigated, following a similar pattern.[1606] There was often an allegation of rape or another crime by a Muslim perpetrator against a Buddhist victim, which was quickly spread by 969, whether true or not. Then a public rally was held, aimed at spreading hatred and inciting violence against Muslims. Credible information indicates that almost every major outbreak of communal violence since October 2012 was preceded by a 969-sponsored preaching tour in the area, usually by Ashin Wirathu himself".[1607]

743. In Meiktila, groups of people reportedly went door to door one week before the violence to distribute 969 stickers to Buddhists asking them to put them on their houses to ensure that they would not get burned in the anti-Muslim violence that followed. Monks were allegedly involved in the violence.[1608]

744. In Mandalay, one Muslim and one Buddhist were killed in riots after a social media post went viral, falsely alleging that two Muslim men had raped a Buddhist woman. Credible reports established that the violence was instigated and perpetrated by outside agitators. The instigation included two fabricated rape allegations made by a Buddhist woman and a Muslim woman, reportedly both hired by the same man.[1609] In March 2015, these two women and three other persons were reportedly convicted and sentenced to 21 years imprisonment under the Emergency Provisions Act and the Penal Code for making false rape allegations.[1610] Senior abbots from Mandalay stated in a pubic report that the rioters – some of them allegedly drunk and dressed like monks – visited them at night, trying unsuccessfully to recruit them to take part in the violence. Similarly, Muslim community leaders from Mandalay stated in the same report that unknown people tried similar tactics on them but they also refused to join.[1611] The attitude of both Buddhist and Muslim leaders prevented the violence from spreading further. Moreover, the President's Office reportedly decided to temporarily block access to Facebook in Mandalay to prevent the circulation of the fabricated rape allegations and related information.[1612]

[1604] The New Light of Myanmar, "No winner in Myanmar's 60-year old armed conflict – Government to use all ways and means vested by the Constitution for restoring peace and stability, ensuring rule of law in Rakhine State: President" (4 October 2013), available at: http://www.burmalibrary.org/docs16/NLM-2013-10-04-red.pdf

[1605] V-049.

[1606] V-167.

[1607] V-167.

[1608] V-049.

[1609] V-167.

[1610] The information was first published in the Burmese version of the State-run newspaper, Myanma Alinn Daily (19 March 2015), available at: http://www.burmalibrary.org/docs21/19.Mar_15_mal.pdf, p.14; K-238.

[1611] V-167.

[1612] T. McLaunghlin, "How Facebook's rise fueled chaos and confusion in Myanmar" (Wired, 7 June 2018).

7. Conclusion

745. The official narrative according to which the 2012 violence was "intercommunal" has prevailed both in Myanmar and internationally. While some human rights organizations, commentators and journalists have questioned it, they remained isolated voices. Regardless of whether it was the intent and purpose from the outset, the Myanmar authorities have used the narrative as a justification to further oppress the Rohingya and the Kaman communities, impose segregation in central Rakhine and confine Muslims to displacement camps and sites for more than six years.

746. Both Rakhine and Rohingya leaders told the Mission that they believed the violence was instigated to divert the attention of the ethnic Rakhine from the Kyaukpyu development project that started in 2009 and was met with strong resistance and protests. They also indicated that it might have been a way for some elements in the Tatmadaw to derail the democratic transition and claim back additional power.[1613]

747. The Mission has reasonable grounds to conclude that the 2012 and 2013 violence in Rakhine State was pre-planned and instigated and that the Myanmar security forces were actively involved and complicit. They participated in acts of violence. They refused to fulfil their duty to provide protection, especially to Rohingya and Kaman in need and their properties. Local authorities, ultranationalist Rakhine organizations and politicians, as well as radical monks instigated and/or assisted in acts of violence, to varying degrees. Given the role of the Tatmadaw in the area at the time, allegations that it had a "hidden hand" in instigating the violence merit further investigation.

748. The extreme levels of violence perpetrated against the Rohingya in northern Rakhine State in 2016 and 2017, and their mass expulsion – as discussed in the next sections – can only be understood against this backdrop:

- Years of concerted hate campaigns against the Rohingya portraying them as "illegal immigrants" constituting a threat to the nation and the Buddhist character of the country, using dehumanising language – with the involvement of and condoning by State authorities and influential figures of authority;
- Decades of gradual marginalisation and eroding of rights, resulting in a State-sanctioned and institutionalised system of oppression affecting the lives of Rohingya from birth to death;
- Denial of legal identity, restrictions on movement, access to food, livelihood, health and education significantly weakening the Rohingya population for years;
- Actively instigated violence between the ethnic Rakhine and the Rohingya, with the involvement of State institutions and other figures of authority, resulting in mass arrests of Rohingya, policies of segregation and the mass displacement and confinement of Rohingya into squalid and barb-wired "displacement" sites and camps in central Rakhine, where they have been arbitrarily detained for more than six years; and
- A Government response that has consistently failed to attribute responsibilities, giving the perpetrators a stamp of approval.

D. 25 August 2017 and the "clearance operations"

> *That day felt like the last day of this world, as if the whole world was collapsing. I thought judgment day had arrived.*[1614]

749. What happened in northern Rakhine State on 25 August 2017 and the following days and weeks was the realisation of a disaster long in the making. It resulted from the systemic oppression of the Rohingya, the 2012 violence, and the Government's subsequent

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[1613] DM-002, DM-006, DM-007, DM-008, DI-012.

[1614] LI-120.

actions and omissions. It caused the disintegration of a community and resulted in a human rights catastrophe, the effects of which will span generations.

750. In the early hours of 25 August, ARSA launched coordinated attacks on a military base and up to 30 security force outposts across northern Rakhine State, in an apparent response to increased pressure on Rohingya communities and with the goal of gaining global attention. A small number of minimally-trained leaders had some arms, and a significant number of untrained villagers wielded sticks and knives. Some had improvised explosive devices. Twelve security personnel were killed.

751. The security forces' response was immediate, within hours, brutal and grossly disproportionate. Ostensibly to eliminate the "terrorist threat" posed by ARSA, in the days and weeks that followed it encompassed hundreds of villages across Maungdaw, Buthidaung and Rathedaung Townships. The operations targeted and terrorised the entire Rohingya population; the authorities called them "clearance operations". They continued for more than two months, and for a considerable period after the Government claimed their completion on 5 September 2017.[1615] During the course of the operation more than 40 per cent of all villages in northern Rakhine State were partially or totally destroyed. The most intense phase was the first three weeks when more than 80 per cent of the destruction was perpetrated. As a result, over 725,000 Rohingya had fled to Bangladesh by September 2018.[1616]

752. Despite the operations covering a broad geographic area, they were strikingly similar. Tatmadaw soldiers would attack a village in the early hours, frequently joined by other security forces, often by ethnic Rakhine men and sometimes men from other ethnic minorities. Elements of the Tatmadaw's 33rd and 99th Light Infantry Divisions had been deployed to Rakhine State earlier in August. The operations were designed to instil immediate terror, with people woken by intense rapid weapons fire, explosions, or the shouts and screams of villagers. Structures were set ablaze and Tatmadaw soldiers fired their guns indiscriminately into houses and fields, and at villagers.

753. The nature, scale and organization of the operations suggests a level of preplanning and design on the part of the Tatmadaw leadership consistent with the vision of the Commander-in-Chief, Senior-General Min Aung Hlaing, who stated at the height of the operations, "The Bengali problem was a long-standing one which has become an unfinished job despite the efforts of the previous governments to solve it. The government in office is taking great care in solving the problem."[1617]

1. A human rights catastrophe

754. The Mission obtained a wealth of information on these events, including over 600 interviews with victims and eyewitnesses, satellite imagery, documents, photographs and videos. It examined many incidents in detail. It found consistent patterns of the most serious human rights violations and abuses.

(a) Most serious incidents

755. The events in six villages or areas are set out in detail below, as verified by the Mission. Based on the information collected by the Mission, these are among the gravest incidents in the course of the "clearance operations".

[1615] "Speech delivered by Her Excellency Daw Aung San Suu Kyi, State Counsellor of the Republic of the Union of Myanmar on Government's efforts with regard to National Reconciliation and Peace" (Facebook post, 19 September 2017), https://www.facebook.com/state.counsellor/posts/speech-delivered-by-her-excellency-daw-aung-san-suu-kyi-state-counsellor-of-the-/1121130291354519.

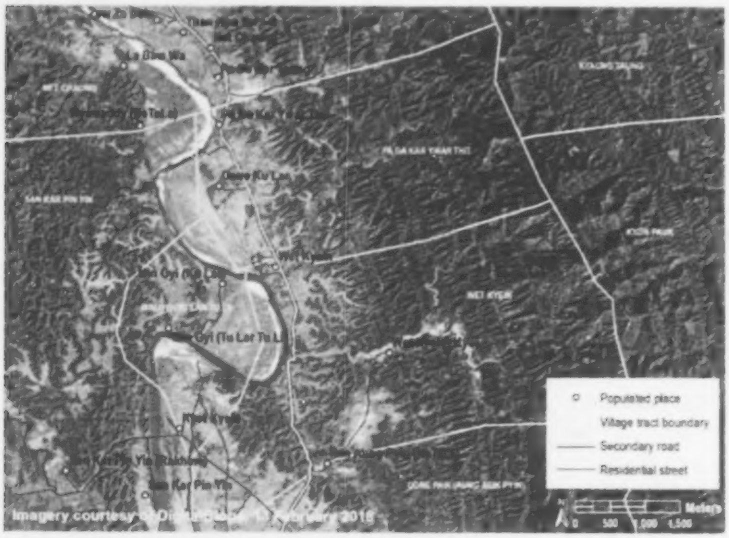
[1616] https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/iscg_situation_report_05_september_2018.pdf

[1617] Senior-General Min Aung Hlaing, "Entire government institutions and people must defend the country with strong patriotism" (Facebook post, 2 September 2017), now defunct, post on file with the Mission.

Min Gyi (Tula Toli)

756. Min Gyi (known in Rohingya as Tula Toli) is a village tract located in Maungdaw Township in northern Rakhine State. With a population of approximately 4,300 Rohingya and 400 ethnic Rakhine[1618], it is surrounded by a river on three sides. Across this river on the eastern side are two other village tracts, Wet Kyein (known in Rohingya as Wed Kayaung) and Pa Da Kar Ywar Thit (known in Rohingya as Diyal Toli).

Image from 13 February 2018 showing the village tracts in the vicinity of Min Gyi village tract



757. On 25 and 26 August 2017, two ARSA attacks took place near Min Gyi.[1619] Witnesses reported hearing gunshots close to Min Gyi on the same dates.[1620] The Government further reported that ARSA burned down 30 houses and set off a handmade mine in Wet Kyein on 29 August.[1621] On the same day, the Government also reported that ARSA burned ethnic Mro homes in Khu Daing (Myo) village in Pa Da Kar Ywar Thit village tract and was responsible for violent acts against Mro villagers during this attack.[1622]

758. Between 26 and 29 August 2017, Tatmadaw soldiers carried out two "clearance operations" in the Rohingya villages in Wet Kyein and Pa Da Kar Ywar Thit village tracts, east of Min Gyi.[1623] As they entered Wet Kyein, they used "launchers"[1624] to set houses on

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[1618] V-064, V-065, V-066, V-067.

[1619] According to the Government, on 25 August "at around 3.35am", ARSA attacked a police checkpoint in Net Chaung village, a few kilometres north of Min Gyi. A second Government statement issued a day later reported that, on 26 August 2017, another ARSA attack took place in Wet Kyein at around 7.16pm at a deserted police checkpoint. Information Committee, "Breaking News 8: Extremist terrorists continue carrying out violent attacks" (Facebook post, 26 August 2017), https://www.facebook.com/InfomationCommittee/posts/786222098217565; K-154.2.

[1620] CI-041, CI-042, CI-046, CI-144, CI-189, EI-066, QI-030.

[1621] Information Committee, "Breaking News 12: Extremist terrorists continue carrying out violent attacks" (Facebook post, 29 August 2017), https://www.facebook.com/InfomationCommittee/posts/787636841409424

[1622] Information Committee, "Breaking News 17: Extremist terrorists continue setting houses on fire" (Facebook post 30 August 2017), https://www.facebook.com/InfomationCommittee/posts/788328661340242; EI-098, RI-008, V-067, V-068. Satellite imagery confirms that ethnic Mro homes in Khu Daing were burned down, and while the Mission believes this information to be credible, it has not been able to verify these allegations. See this chapter, section D.1.c: Arakan Rohingya Salvation Army.

[1623] CI-040, CI-041, CI-042, LI-073, QI-058, QI-071, QI-114, V-064, V-065.

fire[1625] while shooting villagers escaping towards the hills.[1626] Then they moved to Pa Da Kar Ywar Thit and continued shooting towards villagers and setting houses on fire.[1627] Many were injured. One villager who escaped from Wet Kyein recalled that the military were firing at the village from a bridge, using "launchers" and guns. As he tried to flee, carrying his 3-year-old son, he was shot in the thigh. The bullet went through his leg and entered his son's chest, who died on the spot.[1628] Another interviewee, a medical shop owner, said he treated at least 20 people wounded by gunshots, and estimated that at least 100 people were shot and injured while fleeing.[1629] Similar accounts suggest that many others were also shot and killed in both Wet Kyein and Pa Da Kar Ywar Thit.[1630]

759. The first-hand accounts of homes burning are corroborated by satellite images analysed by UNOSAT showing the destruction of approximately 900 structures in Wet Kyein and Pa Da Kar Ywar Thit village tracts.[1631]

760. Some villagers who escaped from Wet Kyein and Pa Da Kar Ywar Thit, fled towards Min Gyi.[1632] The ethnic Rakhine chairperson of Min Gyi had reassured villagers, including those who had fled from Pa Da Kar Ywar Thit and Wed Kyein, that it was safe to remain in Min Gyi.[1633] He told them that the soldiers would come but reassured the villagers not to flee, as they would not be harmed.[1634]

761. On the morning of 30 August 2017, between 8 and 9am, Tatmadaw soldiers entered Min Gyi, across the river and west of Pa Da Kar Ywar Thit,[1635] accompanied by armed ethnic Rakhine, members of other ethnic groups and police security forces.[1636] They entered the village from the north,[1637] opened fire and began burning houses using "launchers" from the village outskirts.[1638] As the soldiers advanced, villagers fled. Some were able to flee to the hills,[1639] others fled towards a large sandbank area beside the river, known as the shore.[1640] The soldiers then opened fire directly at the large number of people fleeing towards the shore.[1641] Many people were shot. One man reported:

> *When I came out of my house that morning on hearing gunshots and seeing the village burning, I could see the military about half a kilometre away. They were firing their weapons. I immediately ran from my house in the other direction, towards the river and the shore. I think that everybody from my village was running towards the shore. While I was running, there was a lot of shooting and I saw many people hit and falling down. There were a huge amount of people at the shore. Five minutes after I arrived, the military moved to the shore and encircled the group. By this point many houses in the village were burning.*[1642]

[1624] Tatmadaw soldiers used weapons referred to by many victims as "launchers". They were described as making loud explosive sounds, after which a whole building or set of buildings rapidly caught fire. "Launcher" likely refers to a weapon that fires a munition that explodes upon impact.

[1625] CI-042, LI-073.

[1626] CI-040, LI-073.

[1627] CI-040, CI-041, CI-144, LI-105, LI-128, QI-058, QI-114, XI-006.

[1628] LI-073.

[1629] QI-114.

[1630] CI-189, LI-105, LI-106, LI-128, RI-008, XI-006.

[1631] Satellite imagery analysis prepared for the Mission by UNOSAT.

[1632] CI-040, CI-042, CI-144, CI-197, LI-097, QI-059, QI-071, QI-114.

[1633] CI-040, CI-041, CI-042, EI-066, LI-078, LI-095, QI-058, QI-059, QI-071, WI-037, WI-038, YI-025, V-064, V-065, V-066, V-069, V-072.

[1634] CI-197, LI-078, LI-095, QI-71, WI-038.

[1635] CI-046, CI-144, QI-066, QI-067, QI-068, WI-004, WI-037, WI-039, YI-025, V-064, V-065, V-066.

[1636] CI-197, CI-198, EI-066, LI-075, LI-078, LI-098, QI-030, QI-058, QI-059, QI-067, QI-071, YI-008, YI-025.

[1637] CI-041, CI -197, QI-030, QI-058, QI-114, WI-037, YI-025.

[1638] CI-042, CI-046, CI-198, EI-102, QI-058, QI-059, QI-060, QI-067, QI-068, WI-039.

[1639] WI-038, WI-039, YI-025.

[1640] CI-046, CI-197, EI-066, EI-102, LI-075, QI-030, QI-058, QI-066, QI-067, QI-068, QI-071, WI-037.

[1641] CI-041, EI-102, LI-078, QI-066, QI-067, WI-037.

[1642] QI-067.

762. A helicopter was observed flying over the village during the morning.[1643] Some described seeing a helicopter landing in the nearby ethnic Rakhine village[1644] and unloading containers of petrol.[1645]

763. The villagers who made it to the shore were then effectively trapped, on one side by the river, and on the other side by soldiers. "We were running to the sandy field as we didn't know where to go. There was nowhere to flee", reported an elderly woman.[1646]

764. Some attempted to swim across the river eastward to Wet Kyein and Pa Da Kar Ywar Thit on the far side. Some made it across.[1647] Numerous persons, especially elderly and children, drowned.[1648] Others were shot by the military while trying to cross the river.[1649]

765. One interviewee recounted that he was shot by soldiers but managed to get away by jumping into the river, where he saw another man shot just in front of him. He then swam across the river and saw bodies floating. He could also hear shooting and screaming from the shore.[1650] Several accounts described bodies of men, women and children floating in the river.[1651] Dozens of bodies were recovered by a group of men at the other side of the river.[1652]

766. Those who remained on the shore, who numbered in the hundreds, were then rounded up. The soldiers separated women and children from the men.[1653] Soldiers then systematically killed the men.[1654] As one witness described:

> *The first round of shooting was like a rain of bullets. The second round was slow as the soldiers killed the men individually. They aimed a gun at each man and shot.*[1655]

767. Soldiers then killed those who had survived gunshot wounds with long knives, including children.[1656] One woman described how she saw her husband shot, after which his throat was slit,[1657] and another woman, who lost seven children, reported that:

> *Soldiers separated the groups into men and women. The men were all in one group, and were killed. Men who were not shot dead, who were struggling or severely injured, were killed with a knife.*[1658]

768. The dead bodies were then thrown into pits dug by the military and ethnic Rakhine, covered with tarpaulin, and set on fire with gasoline.[1659]

> *They put all dead bodies into those three pits and then set them on fire. I think that the military used petrol to burn the dead bodies because flames from the fire rose up very high and fast.*[1660]

[1643] CI-041, CI-046, CI-197, EI-066, LI-078, LI-095, LI-098, LI-128, QI-058, QI-068, WI-037, YI-008, YI-025.

[1644] CI-197, LI-078, LI-098, QI-058, YI-008, V-067.

[1645] CI-144, EI-066, LI-095, YI-025.

[1646] LI-078.

[1647] CI-198, LI-095, WI-037.

[1648] CI-197, LI-097.

[1649] QI-066, QI-067, QI-068, YI-025.

[1650] QI-067.

[1651] CI-040, CI-042, EI-066, LM-018, QI-058, QI-066, QI-067, YI-025.

[1652] CI-040, CI-042, CI-197, LI-097, LM-018.

[1653] CI-197, CI-198, EI-066, LI-078, LI-095, QI-058, QI-059, QI-060, QI-067, QI-071.

[1654] CI-042, CI-046, CI-197, CI-198, EI-066, EI-081, LI-075, LI-078, QI-030, QI-058, QI-059, QI-060, QI-071.

[1655] CI-046.

[1656] CI-197, LI-078, QI-68, QI-071, WI-037.

[1657] EI-102.

[1658] LI-078.

[1659] CI-041, CI-042, CI-046, CI-144, CI-197, CI-198, EI-066, EI-102, LI-075, LI-095, LI-097, QI-030, QI-058, QI-059, QI-067, QI-068, QI-071, WI-038, YI-008, YI-025, V-064, V-065.

[1660] CI-046.

769. Soldiers also removed jewellery and other valuable items from the dead bodies before setting them on fire.[1661]

770. Soldiers then turned to the women and children who, after being separated from the men, were forced to sit in a lowered area on the shore. Some of the children were shot,[1662] some thrown into the river,[1663] and others thrown onto a fire.[1664] One witness said that, after the departure of the helicopter, the soldiers took infants from their mothers' laps and threw them into the river. She described seeing children's bodies "floating away".[1665] Another witness described seeing soldiers stabbing a 10-year-old boy who was trying to run away with a knife. She described her body turning numb with fear.[1666]

771. The soldiers then took women and girls in groups of between five and seven to some larger houses in the village.[1667] Many women had their young children and infants with them. One mother said that she was with her daughter when the soldiers took her, her two sisters-in-law, an elderly woman and three of her younger brothers-in-law aged between seven and ten years old. On the way to the houses, they were taken past the large pits in which bodies were being put. A soldier grabbed the woman's daughter from her, and threw her into one of the pits. She did not want to leave her daughter and just stood there. A soldier then beat her repeatedly and she was forced to move on towards the houses.[1668]

772. Women and girls were taken into rooms where their jewellery and money was taken from them.[1669] They were beaten,[1670] brutally raped[1671] and frequently stabbed. Children or infants who were with them in the room were also killed or severely injured, often by stabbing.[1672] The houses were then locked and set on fire.[1673] The few women who survived, and who spoke with the Mission, displayed both serious burn marks and stab wounds, which were consistent with their accounts,[1674] and were deeply traumatised.[1675] They also described seeing dead bodies of men, women and children in the houses.[1676] A survivor described how she was taken together with her sister, her mother, two neighbours and her young daughter and son to one of the houses. When she entered the house she saw women being raped. Then they were taken to an empty room where they were robbed, undressed and raped. Her sister, mother and son were killed: "My daughter woke me up saying she was getting burned. They had locked the house and set it on fire. I managed to break down the door, and my daughter and I managed to escape. I had no clothes on and my skin was very badly burned."[1677] Another survivor recounted a similar experience:

> *I entered the house with four of my neighbours, and three of us had babies. I knew the house. There were dead bodies on the floor, young boys and older men from our village. After we entered the house, the soldiers locked the door. One soldier raped me. They stabbed me in the back of my neck and in my abdomen. I was trying to save my baby who was only 28 days old but they threw him on the ground and he died. The other women who were there were also raped. It was late in the afternoon when*

[1661] CI-046, CI-197, LI-098, QI-068.

[1662] LI-078.

[1663] CI-046, CI-144, CI-197, EI-102, LI-078, V-064, V-065.

[1664] EI-102, LI-097.

[1665] CI-046.

[1666] LI-078.

[1667] CI-042, CI-046, CI-197, EI-066, EI-080, EI-081, LI-075, LI-078, QI-030, QI-058, QI-059, QI-060, QI-068, QI-071, WI-037, WI-038 YI-025, YI-0081.

[1668] QI-071.

[1669] EI-080, QI-071.

[1670] EI-080, EI-081, QI-071, LI-075, LI-078.

[1671] CI-046, EI-080, EI-081, LI-075, QI-071, QI-114, K-150, K-151.

[1672] EI-080, EI-081, LI-078, QI-071, WI-004.

[1673] CI-042, CI-046, CI-197, CI-198, EI-066, LI-075, LI-078, QI-030, QI-058, QI-059, QI-060, QI-068, QI-071, WI-037, WI-038, YI-008, YI-025.

[1674] EI-081, EI-102.

[1675] EI-081, EI-102.

[1676] EI-081, EI-102

[1677] EI-102.

> *I became conscious. I awoke because small flames were dropping from the roof onto my body. I was the only one who survived in that room. I could barely move but I realised I was going to burn to death. Although my baby was dead, I held him close to my heart, but I could not bring his body with me. I escaped through a small door in the kitchen, which was unlocked.*[1678]

773. During the course of the "clearance operation", the houses and other structures in the various Rohingya hamlets of Min Gyi were completely burned and destroyed. Satellite imagery analysis confirms that Min Gyi was destroyed by 16 September 2017 and that approximately 440 structures were burned. The ethnic Rakhine village to the south remains intact (referred to in the image as "Min Gyi (Tu Lar Tu Li)").[1679]

Image from 25 May 2017 shows intact settlements in Min Gyi

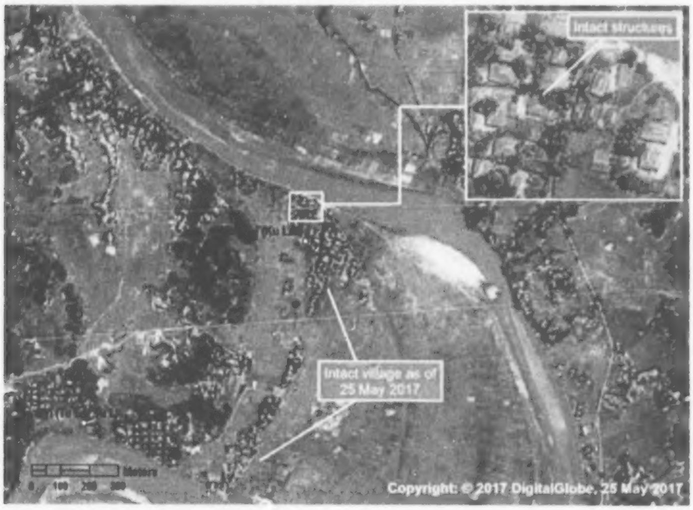
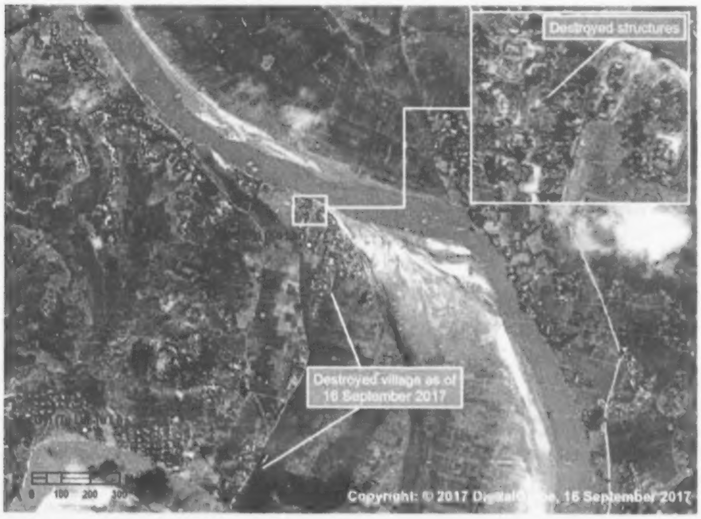

Intact structures
Intact village as of 25 May 2017
0 100 200 300 Meters
Copyright: © 2017 DigitalGlobe, 25 May 2017

Image from 16 September 2017 shows destroyed Rohingya settlements and intact Rakhine settlement (in bottom left corner) in Min Gyi


Destroyed structures
Destroyed village as of 16 September 2017
0 100 200 300
Copyright: © 2017 DigitalGlobe, 16 September 2017

[1678] EI-081.

[1679] Satellite imagery analysis prepared for the Mission by UNITAR-UNOSAT.

774. Credible information collected by Rohingya community volunteers in the refugee camps in southern Bangladesh indicates that at least 750 people died in Min Gyi on 30 August 2017, including at least 400 who had been residents of Min Gyi.[1680] The total number includes villagers from Wet Kyein, Pa Da Kar Ywar Thit and elsewhere who had sought safety in Min Gyi.[1681] People died from being shot, stabbed, slit across the throat by a knife, beaten to death, drowned and burned. Many more were injured, and others remain unaccounted.

775. While the Mission has not been able to verify the accuracy of the full list, the Mission interviewed dozens of victims who had lost many family members in Min Gyi. One 25-year old man interviewed had lost his entire family: his father and his three younger brothers of 13, nine and seven years old were shot and killed and he believes his mother, wife and sisters were killed by soldiers inside the houses.[1682] A 27-year old woman saw 11 family members killed that day on the shore, including her 20-day old baby who she said was slaughtered with a knife and thrown on the ground.[1683] A 22-year old man reported returning to the village to collect the dead bodies of his family though he found only burned bodies.[1684] A 25-year old female survivor of rape reported that she lost eight members of her family, including her 28-day old baby.[1685]

776. All interviewees identified Tatmadaw soldiers as the main perpetrators.[1686] A number recognised the insignia of the Western Command on the shoulder patch.[1687] Many accounts also described helmeted soldiers in camouflage uniform that were distinguishable from other regular uniformed soldiers.[1688] The Mission believes these soldiers to be from the 99th LID.[1689] Credible sources have identified the 99th LID as being present in Min Gyi during the attack.[1690]

777. Ethnic Rakhine and members of other ethnic minorities participated. Several interviewees identified ethnic Rakhine, as well as Mro (Murong), Chakma and Kui from nearby villages.[1691] They were equipped with long knives, machetes and other type of local weapons.[1692] Some saw them also use knives to kill, including children.[1693]

778. Survivors of rape in Min Gyi also identified members of the Tatmadaw and soldiers in camouflage as the perpetrators of rape and killing of women and children in the houses. It is likely that this indicates the involvement of the 99th LID as perpetrators of these rapes.[1694]

Chut Pyin

779. Chut Pyin (known in Rohingya as Shuap Parung) is in northern Rathedaung, at the intersection of the three townships of northern Rakhine State. Chut Pyin includes a Rohingya village, with an original population estimated as approximately 1,200 inhabitants, and an ethnic Rakhine hamlet, Thet (known in Rohingya as Chak Para), inhabited by approximately 400 ethnic Rakhine, located a short distance away. Within the village tract

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[1680] K-153.1.

[1681] K-153.1, V-070.

[1682] YI-025.

[1683] EI-066.

[1684] CI-041.

[1685] EI-082.

[1686] CI-041, CI-046, CI-197, CI-198, EI-065, EI-066, EI-081, EI-102, LI-021, LI-075, LI-078, LI-095, LI-098, QI-030, QI-058, QI-059, QI-60, QI-066, QI-067, QI-068, QI-071, WI-034, WI-037, WI-038, WI-039, YI-008, YI-025.

[1687] QI-060, QI-114.

[1688] CI-197, CI-198, EI-066, EI-102, QI-059, QI-071, WI-004.

[1689] CI-197, CI-198, LI-098, XM-008, YM-008.

[1690] LM-014, XM-008, V-067, V-071.

[1691] CI-197, CI-198, EI-066, LI-075, LI-078, LI-098, QI-030, QI-058, QI-059, QI-067, QI-071, YI-008, YI-025.

[1692] CI-197, EI-066, LI-075, LI-078, QI-030, QI-058, QI-059, QI-067, QI-071, YI-008, YI-025.

[1693] CI-197, LI-098, EI-066, LI-075, LI-078.

[1694] CI-046, EI-080, EI-081, LI-075, QI-071, QI-114, WI-004.

there was another Rohingya village, Chin (Pyaing Taung). There was one security forces' camp to the north of the Rohingya hamlet located close to Thet, where Tatmadaw, Police and BGP had been stationed.[1695]

780. A number of events, occurring throughout July and August 2017 in and around Chut Pyin village tract, had heightened tensions in the north of Rathedaung Township.[1696] An increased military presence led to severely restricted freedom of movement for villagers in the weeks prior to the "clearance operation", and a meeting was convened for village leaders at which Tatmadaw soldiers of the 33rd LID made death threats.[1697]

781. Myanmar authorities reported that the "Chopyin outpost in Region-11" was attacked by ARSA on 27 August 2017 "with homemade bombs" but that the attack was "repulsed by security personnel". No casualties were reported.[1698] The Mission was unable to verify this attack.[1699] However, plans for a "clearance operation" in Chut Pyin appear to have been made prior to this. Different groups of people fleeing from the "clearance operation" in nearby Zay Di Pyin the previous day were instructed by soldiers present not to enter Chut Pyin. One Rohingya village elder stated that he received a phone call from the village administrator of Chin (Pyaing Taung) to this effect.[1700] Consequently, villagers fleeing Zay Di Pyin sought refuge in Chin (Pyaing Taung) instead.[1701]

782. On 27 August 2017, Chut Pyin was subject to a particularly brutal "clearance operation". At around 2pm,[1702] a large group of hundreds of Tatmadaw soldiers,[1703] including members of the 33rd LID[1704] as well as other security forces,[1705] came out of the Rakhine hamlet[1706] and surrounded Chut Pyin.[1707] They were accompanied by a smaller number of ethnic Rakhine from neighbouring villages.[1708]

783. The security forces then opened fire, shooting at villagers, including those who were fleeing.[1709] Soldiers also dragged people from houses and shot some of them at point blank range.[1710] Others were killed by having their throats slit with large knives.[1711] "If people were not killed by the gunshots, they were slaughtered to make sure they were really dead", reported one survivor.[1712] Killing with knives was frequently perpetrated by ethnic Rakhine.[1713]

784. During the course of the operation, structures in Chut Pyin were burned and destroyed. The security forces used "launchers" to set houses on fire, including those still

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[1695] BI-007, BI-009, CI-185, WI-003, WI-006, V-072, V-073.

[1696] See this chapter, section D.2.b. The build-up to 25 August 2017.

[1697] RI-001, RI-004; See this chapter, section D.2.b. The build-up to 25 August 2017.

[1698] Information Committee, "Breaking News 10: Terrorists trying to destroy Maungtaw" (Facebook post, 27 August 2017), https://www.facebook.com/InfomationCommittee/posts/786691611503947

[1699] K-154.1.

[1700] CI-145, LI-118, LI-129, QI-115, K-155.1.

[1701] CI-145, CI-184, LI-118, LI-129, QI-115, K-155.1.

[1702] BI-007, BI-008, BI-009, BI-010, CI-019, CI-177, CI-185, CI-191, LI-008, QI-050, QI-052, RI-001, WI-003, WI-005, WI-006, WI-027, V-067.

[1703] BI-007, BI-008, BI-009, CI-019, CI-177, CI-191, EI-003, EI-004, EI-005, LI-008, LI-009, LI-010, QI-050, QI-052, WI-003, WI-005, WI-006, WI-024, WI-027, LM-006, LM-012, LM-018, K-151, K-155.1, V-075.

[1704] CI-191, LM-014, XM-008, V-067, V-071.

[1705] BI-007, BI-008, BI-009, BI-010, CI-019, WI-003, WI-006, WI-024, LM-012, V-073, V-067.

[1706] CI-177, WI-003.

[1707] BI-007, BI-008, BI-009, BI-010, CI-185, CI-191, LI-010, QI-052, WI-005, LM-006.

[1708] BI-008, BI-009, CI-019, CI-177, CI-185, CI-191, EI-003, EI-004, EI-005, LI-042, QI-031, QI-052, RI-001, RI-004, WI-005, WI-006, WI-027.

[1709] BI-008, BI-009, BI-010, CI-019, EI-003, EI-004, EI-005, LI-009, LI-010, QI-050, WI-003, WI-005, WI-006, WI-024, WI-027.

[1710] BI-008, LI-008, WI-024, LM-006.

[1711] CI-191, LI-008, LI-009, WI-002, WI-005, WI-027.

[1712] WI-005.

[1713] BI-009, CI-191, LI-042, QI-050, WI-024, WI-027, K-155.2, V-073, V-075.

occupied.[1714] A number of people were forced inside houses, which were then intentionally set alight.[1715] In one house, a group of between six and seven men were forced inside; some escaped, others were burned alive.[1716]

785. One elderly woman described how she was pulled out of her house, together with her 70-years old brother:

> *Soldiers used rifle butts to beat my brother on the head and I saw his brains come out. I saw people being killed with long knives. The soldiers were also spraying bullets and many people were injured and killed. Our village was full of dead bodies. I saw dozens of people killed. First, they shot the people and then if they were still alive and the body was moving they used a machete to slaughter across the throat.*[1717]

786. She managed to escape with her 10-year old granddaughter who was shot in the leg. As the child recalled in shock: "They were shooting at us so we were just crawling through the bodies".[1718] The child said that she saw her father, mother, sister and brother killed.[1719] The girl and her grandmother told the Mission that they lost seven members of their family that day.[1720]

787. The chaos of the situation was described vividly by one woman who was shot in her arm while trying to escape:

> *They began to set fire to the houses so I ran. That is when I was shot. It wasn't easy to get away, as I had to hide behind whatever I could find to avoid bullets. As I was running, I saw others running to save their lives too. People were being shot, slaughtered and beaten, forcing us to move from one place to another. Everyone was desperate as we didn't know where to flee.*[1721]

788. The operations in Chut Pyin lasted until about 7pm.[1722] Rohingya from nearby villages confirmed seeing smoke rising from Chut Pyin from 2pm until the evening, when it started to rain, and hearing the sound of bullets until around 7pm.[1723] Satellite imagery analysis from 16 September 2017 shows the extent of the destruction in Chut Pyin. The entire Rohingya village of Chut Pyin was destroyed, while the nearby non-Rohingya village of Thet remains intact.

[1714] BI-008, BI-009, BI-010, EI-003, EI-004, LI-008, LI-009, LI-010, QI-050, RI-001, WI-003, WI-005, WI-024, WI-027.

[1715] WI-003, WI-005.

[1716] WI-003, WI 005, V-075.

[1717] LI-008.

[1718] LI-009.

[1719] LI-009.

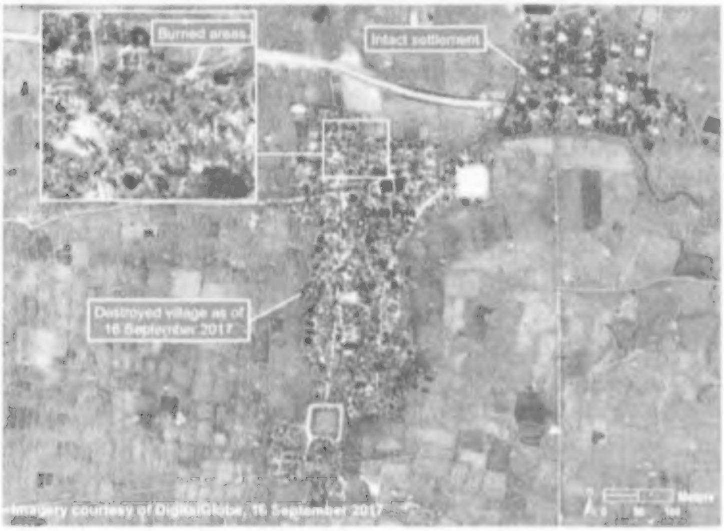
[1720] LI-008, LI-009.

[1721] WI-003, V-075.

[1722] CI-177, RI-001, WI-005, V-075.

[1723] LI-118, LI-129, QI-031, QI-115.

Image of Chut Pyin from 16 September 2017 showing burned structures



Imagery courtesy of DigitalGlobe, 16 September 2017

789. A large number of women and children were victims of the attacks.[1724] Children, including infants and babies, were specifically targeted; some were wrenched from their mothers' arms and thrown to the ground, others were thrown into fires and burned alive.[1725] As one woman explained, women were sometimes slower to flee and therefore easier targets, particularly if they were carrying their infants and children.[1726] One woman was inside her house with a group of children when the house was set on fire. She ran to escape, carrying her 20-month old baby, and dragging along her eight-year old child. She was then shot. The bullet hit both her and her baby, who died immediately. Her eight year old was also shot, and died later that night in the paddy field where they were hiding.[1727] Another mother recalled the death of her young son who was two and a half years old and who was shot in the side of his upper torso. His last words were, "I need water, mother, I am very thirsty." She held his dead body in her arms all night.[1728]

790. Women and girls were also subjected to rape, gang rape, sexual mutilation and sexual humiliation during the "clearance operations" in Chut Pyin.[1729] Credible and consistent reports describe how members of the Tatmadaw separated women and girls. They selected some of them, taking them to a school, which was being used as a military base, where mass gang rape took place.[1730] Women and girls were subjected to serious physical injuries either before being raped or after being killed, including the mutilation of their breasts.[1731] An interviewee described how he saw two groups of five Tatmadaw soldiers arrive in Chut Pyin from the nearby military compound. From his hiding place, he saw them "grabbing" women and heard the women screaming. He saw the military cutting off the breast of a woman who later died.[1732] The Tatmadaw also assaulted and humiliated women and girls while stealing from them.[1733]

[1724] EI-003, EI-004, EI-005, LI-009, QI-050, WI-003, WI-005, WI-006, K-155.1.

[1725] QI-052, WI-003, WI-005, LM-018.

[1726] WI-006.

[1727] WI-003.

[1728] QI-050.

[1729] CI-177, LI-009, QI-052, WI-005, WI-006, WI-027, K-151, K-155.1.

[1730] CI-191, EI-093, QI-052, K-151, K-155.1.

[1731] WI-005, WI-006, WI-027, LM-018.

[1732] WI-005.

[1733] BI-010, WI-003, WI-005.

791. A large group of 57 men, mostly teachers and other educated people, were taken away by soldiers during the "clearance operation". There has been no further information regarding their whereabouts.[1734]

792. Some persons who managed to survive did so by hiding in the long grass of the paddy fields or in ponds.[1735] From their hiding places, some of these saw many dead bodies.[1736] Others who returned to the village later that evening reported seeing bodies strewn across the village, including inside houses and outside compounds.[1737] Another man who passed through Chut Pyin a few days later noted, "There were dead bodies everywhere, and many children's bodies were floating in the river. We were terrified, and had to cover our mouths because of the bad smell."[1738]

793. Rohingya villagers who survived fled to neighbouring villages, with a large number finding refuge in Ah Htet Nan Yar village (known in Rohingya as Razar Bil), where local Rohingya provided them with basic medical care, food and shelter.[1739] One woman described the situation:

> *Everyone was crying, as everyone had lost someone, members of their families. I have never seen so many people mourning the deaths of loved ones at the same time.*[1740]

794. A number of survivors died soon afterwards in Ah Htet Nan Yar due to a lack of access to adequate medical care. Bodies recovered from Chut Pyin were also brought to Ah Htet Nan Yar and buried in collective graves.[1741] As one villager from Ah Htet Nan Yaar explained:

> *That night, many people who had fled from Chut Pyin came to our village. Some of my relatives brought with them 16 dead bodies from Chut Pyin. I arranged the funeral and buried them in the graveyard in the village. There were many dead bodies and injured people brought by other villagers as well.*[1742]

795. The Mission received video footage, time-stamped 29 August 2017, of injured Rohingya describing the attack on Chut Pyin, as well as footage of sites described as mass graves of those that were buried in Ah Htet Nan Yar.[1743] Forensic analysis of the footage, which shows Rohingya, including men, women and children, with gunshot wounds and other serious injuries, is consistent with the testimonies received.[1744] Forensic analysis further indicates areas of freshly disturbed earth indicative of gravesites.

796. A list prepared by Rohingya community volunteers in the refugee camps of southern Bangladesh indicates that 358 persons were killed that day. The list further details that 127 children aged five or under were killed; 19 women raped; 94 people lost limbs due to injuries sustained; and 57 people remain unaccounted.[1745] While the Mission cannot confirm the accuracy of the list, it is consistent with information received, and many deaths documented by the Mission appear on the list. Almost all of the more than 20 people from Chut Pyin interviewed by the Mission reported deaths of many family members and neighbours.

[1734] CI-185, CI-191, RI-001, K-153.3.

[1735] BI-009, BI-010, CI-185, RI-001, WI-003, WI-027, LM-006.

[1736] BI-007, BI-008, BI-010, QI-050, QI-052, WI-003.

[1737] CI-019, CI-177, LI-042, QI-031.

[1738] LI-118.

[1739] BI-007, BI-009, BI-010, CI-019, CI-177, CI-185, CI-191, LI-008, LI-042, RI-001, WI-003, WI-006, WI-027, LM-006, LM-018.

[1740] WI-006.

[1741] CI-019, CI-177, CI-191, CI-199, WI-027, LM-006, LM-012, QI-050.

[1742] CI-199.

[1743] CI-200.

[1744] CI-191.

[1745] CI-185.

797. The Chut Pyin "clearance operations" were led by the Tatmadaw.[1746] A number of victims recognised the insignia of the Western Command.[1747] Consistent and credible sources, as well as the Myanmar media,[1748] indicate that the 33rd LID led or actively participated.[1749] The Tatmadaw were accompanied by other security forces[1750] and ethnic Rakhine.[1751] Individuals from the neighbouring ethnic Rakhine village were recognised as participants[1752] and some ethnic Rakhine men assisted the military in identifying specific Rohingya villagers.[1753] In particular, the Rakhine chairperson of Chut Pyin participated in the violence, armed with a knife or sword, guiding the military through the village.[1754]

798. Some of the ethnic Rakhine were in non-military clothing,[1755] equipped with swords, knives and machetes, or other types of local weapons.[1756] Others were wearing military style uniforms and equipped with guns.[1757] This may indicate the involvement of the ethnic Rakhine militia, who are sometimes referred to as *Pyi Thu Sit*.

Maung Nu

799. Maung Nu (known in Rohingya as Monu Para) is a village in the Chin Tha Mar village tract of Buthidaung Township with approximately 400 Rohingya households.[1758] Less than one kilometre north, Hpaung Taw Pyin village (known in Rohingya as Pondu Prang) has approximately 350 Rohingya households[1759] and a BGP outpost.

800. There are two military bases near Maung Nu, both under the Western Command. Light Infantry Battalion 564 is just south of Maung Nu and Light Infantry Battalion 552 is approximately 10 to 12 kilometres north, in Nga Yant Chaung village tract (also known as Taung Bazar).

801. Early on 25 August 2017, ARSA attacked the BGP outpost in Hpaung Taw Pyin.[1760] Villagers in Maung Nu and Hpaung Taw Pyin heard gunshots coming from this direction in the early morning.[1761] The Government stated that two police officers and two assailants were killed.[1762]

802. There were two additional ARSA attacks near Maung Nu early that morning: the first at the military base occupied by the Light Infantry Battalion 552, and the second shortly afterwards at the BGP outpost, both in Nga Yant Chaung village tract. The Government said it recovered seven bodies of assailants involved.[1763] One interviewee

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[1746] BI-007, BI-008, BI-009, CI-019, EI-003, EI-004, EI-005, LI-008, LI-009, LI-010, QI-050, QI-052, WI-003, WI-005, WI-006, WI-024, WI-027, LM-006, LM-018, K-155.1.

[1747] BI-009, QI-050, V-067.

[1748] K-163, V-256, "It was reported that extremist Bengali terrorists and Myanmar Tatmadaw LID 33 were fighting in Chut Pyin village, Rathedaung Township" (Eleven Media Group, 27 August 2017).

[1749] CI-191, K-155.2, V-067, V-071.

[1750] BI-007, BI-008, BI-009, BI-010, CI-019, WI-003, WI-006, WI-024.

[1751] BI-008, BI-009, CI-019, CI-177, CI-185, CI-191, EI-003, EI-004, EI-005, LI-042, QI-031, QI-052, RI-001, RI-004, WI-005, WI-006, WI-027.

[1752] CI-019, QI-052, WI-005, LM-006, K-155.2.

[1753] BI-010, WI-005.

[1754] BI-007, BI-010, QI-115, LM-006, LM-012.

[1755] BI-008, CI-019, LI-042.

[1756] BI-008, BI-009, CI-019, CI-191, EI-003, LI-042, QI-031, RI-001, RI-004, WI-006.

[1757] EI-003, EI-004, EI-005, QI-052, RI-004, WI-005, WI-027, LM-006, K-155.2.

[1758] CI-196, LI-055, V-076.

[1759] CI-026, CI-109, LI-055.

[1760] K-154.1, K-154.2.

[1761] CI-026, CI-044, CI-109, CI-110, CI-195, CI-196, EI-019, LI-055, LI-084, WI-017, YI-032, YI-033.

[1762] Information Committee, "Breaking News 2" (Facebook post, 25 August 2017), https://www.facebook.com/InfomationCommittee/posts/785202504986191

[1763] Information Committee, "Breaking News 1: Many police outposts and police stations in Maungtaw attacked by extremist terrorists" (Facebook post, 25 August 2017), https://www.facebook.com/InfomationCommittee/photos/a.639477959558647.1073741828.639456206227489/785096194996822/?type=3 reported that at approximately 8am that day, after the shooting had ended, he came out of his house and saw security forces dragging seven bodies onto a boat.[1764]

803. Later that morning, Tatmadaw soldiers entered Hpaung Taw Pyin in their vehicles and stopped near the BGP outpost. They opened fire and people started to flee.[1765] Interviewees reported that soldiers and other security forces that morning arrested four young boys, including the 15-year old son of a Rohingya village leader and a 22-year old religious scholar. Both were believed to have been killed.[1766]

804. Many people from Hpaung Taw Pyin and surrounding areas fled south to Maung Nu.[1767] Some families sought shelter in relatives' homes, and some in a large compound owned by two Rohingya relatives, who were known to have good relations with the security forces in the area.[1768] Within the compound were a large two-story house and other smaller houses.[1769] Most of the men hid upstairs in the main house, while most of the women and children sought shelter downstairs. Eventually approximately 200 people had sought shelter inside the compound.[1770]

805. A large group of Tatmadaw soldiers entered Maung Nu on 27 August 2017, between 10 and 11am.[1771] They arrived in military trucks and spread out in small groups on foot making their way towards the compound, while firing in the air.[1772]

806. Once in the compound, the soldiers ordered people to come out of the houses,[1773] with the threat that otherwise the houses would be set on fire.[1774] Soldiers then broke down a door of the main house, and a number of them entered and continued to fire sporadically once inside.[1775] A child was hit in the head by a bullet and died shortly afterwards.[1776]

> *The soldiers broke down a door and started firing inside. I saw my brother's 10-year old son shot in the head. His head was split open and his brain splattered on the wall.*[1777]

807. As people started to come out from the houses, the soldiers separated women and children from men. Soldiers ordered the women at gunpoint to remove their headscarves, with some soldiers pulling them off. They also searched the women repeatedly for valuable items, ripping open their clothes.[1778] One interviewee had an earring ripped from her ear by a soldier, leaving her wounded.[1779] Soldiers then separated the women and children into different groups and locked them inside smaller houses within the compound.[1780]

808. One of the men who owned the compound was among the first to be killed. While two soldiers held him, a third stabbed him with a knife. Two of his sons were shot dead while trying to intervene.[1781] The killings then became more organized. In the courtyard, men and boys were rounded up, most having their hands bound with rope, and made to kneel face down, pointing eastwards. Soldiers also used some of the women's headscarves to blindfold the men and boys, and to tie their hands behind their back.[1782] They then

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[1764] LI-055, V-077, V-078.

[1765] EI-019, WI-017.

[1766] CI-195, LI-084, V-067, V-076.

[1767] CI-109, CI-110, CI-026, CI-196, EI-019, LI-055, WI-017, YI-032.

[1768] CI-026, CI-110, CI-195, CI-196, LI-081, LI-084, LI-094, QI-042, WI-017, YI-032.

[1769] CI-026, CI-194, CI-195, LI-094.

[1770] CI-026, CI-196, LI-079, QI-042, YI-032.

[1771] CI-026, CI-110, CI-196, LI-079, LI-084, QI-042, WI-017.

[1772] CI-026, CI-110, CI-195, CI-196, LI-055, YI-033.

[1773] CI-026, CI-109, CI-110, EI-019, LI-081, QI-042, WI-017, YI-032.

[1774] CI-195, LI-079, QI-042, WI-017, YI-032, V-076.

[1775] CI-195, EI-019, YI-032, YI-033.

[1776] QI-042, YI-032, YI-033, V-076, K-156.

[1777] QI-042.

[1778] LI-079, LI-084, QI-042, WI-017, YI-032, YI-033.

[1779] LI-084.

[1780] LI-079, QI-042, YI-032, YI-033.

[1781] CI-026, CI-109, CI-110, CI-196, WI-017.

[1782] CI-026, CI-109, EI-019, QI-042, WI-017, YI-032, YI-033.

opened fire on [illegible] and boys. Soldiers also slit their throats with knives.[1783] A small group of men [illegible] were taken from the courtyard to an area of scrubland a few minutes walking distance away, where they were killed.[1784] One interviewee who managed to hide within the compound recounted:

> *The soldiers took the men out of the house and tied up their hands behind their back with a rope. When the rope had finished they used women's headscarves to tie them up. Soldiers forced them to lie with their chest and face down on the ground. Some of them were shot first and then their throats were slit with a knife. Others just had their throats slit.*[1785]

809. Soldiers killed a number of children in the courtyard.[1786] One interviewee saw a young child stabbed by soldiers while crying.[1787] Another woman saw soldiers kill her two nephews through a crack in a door of one of the compound houses:

> *The soldiers killed the male members of my family. They shot at them first and then slit their throats. The courtyard was full of blood. They killed my husband, my father-in-law and my two nephews of 15 and eight years old. They even killed the child in the same way.*[1788]

810. Women and girls were also gang raped, killed and mutilated.[1789] One interviewee saw two women being raped by two or three members of the Tatmadaw. The screams he heard led the interviewee to conclude that the two women were then killed.[1790] Another witness who was hiding nearby described one woman being killed by being knifed in her vagina.[1791]

811. A female survivor from Maung Nu described how soldiers caught her and other women while trying to flee the village:

> *I ran to the hills to escape the shooting. My husband and I were caught by the military. My husband was badly beaten and could not move. Three members of the military took me. One man held me down and pushed me to the ground. They tore of my clothes. Two men raped me. My husband could still see me. They took many other women – maybe around 10-20 women. I saw them being raped. They took women at different times. I knew some of the women – they were from my village.*[1792]

812. The incident lasted until sunset. After the killings, soldiers loaded a number of bodies, wrapped in tarpaulin, onto military trucks.[1793] One interviewee who had been hiding nearby saw soldiers leaving the village in the early evening in three military trucks.[1794] Another witness in hiding saw military trucks leave and later return to the village several times. He believed that soldiers were transporting bodies to the military base.[1795]

813. Later that evening, after the soldiers had left, villagers returned and rescued women and children. Witnesses described seeing blood and the ground feeling "sticky".[1796] Others described seeing bodies, including of children, and body parts scattered on the ground.[1797] One interviewee described stepping on peoples' clothes and headscarves that were covered with blood, and then finding a dead body, with a slit throat. He returned the following day

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[1783] CI-026, CI-109, CI-110, CI-194, CI-196, EI-018, LI-079, LI-094, QI-042, WI-017.

[1784] CI-194, CI-196, V-067.

[1785] CI-196.

[1786] LM-018, V-077.

[1787] CI-109.

[1788] LI-079.

[1789] EI-019, EI-027, LI-081, LI-094.

[1790] LI-094.

[1791] LI-081.

[1792] EI-027.

[1793] CI-026, CI-194, CI-195, CI-196, LI-094, QI-042, WI-017, YI-033.

[1794] LI-055.

[1795] CI-196.

[1796] LI-084, LI-094, YI-033.

[1797] CI-026, CI-044, CI-194, LI-055, LI-079, LI-094.

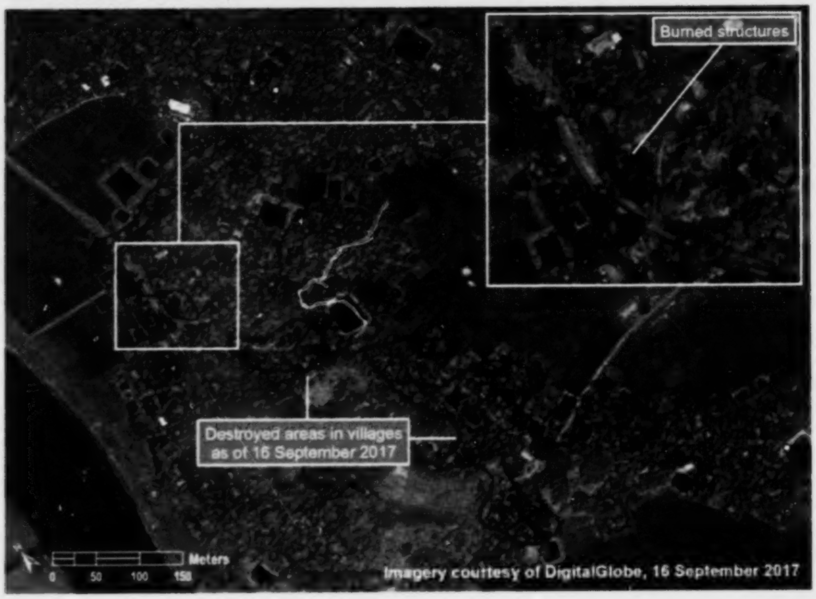
and found a pit where the soil was disturbed and where he presumed bodies had been buried.[1798]

814. Credible reports suggest that soldiers buried some bodies in shallow pits in a nearby field.[1799] The Mission analysed video footage and photos that show patches of blood in a scrubland area said to be near the compound.[1800] It has also reviewed footage of tarpaulin bags buried just below the surface in an area similar to the one previously described. A human leg, already in an advanced stage of decomposition, is visibly protruding from one of the bags. The Mission was not able to independently verify the geo-location or date of the video footage; however, the details shown, such as patches of blood, women's headscarves and other elements, are consistent with eyewitness accounts of the events in Maung Nu.

815. Information indicates that up to 100 people, mostly men and boys, were executed in Maung Nu.[1801] The Mission has received a non-exhaustive list of the dead compiled by Rohingya community volunteers in the refugee camps of southern Bangladesh. It details the names, ages and professions of 82 people killed (48 people from Maung Nu and 34 from Hpaung Taw Pyin). Aside from one woman, they are all men and boys, with 28 under 18 years old, the youngest six years old. While the Mission cannot confirm the accuracy of the full list, it is consistent with information received, and names of persons documented by the Mission as killed appear on the list.[1802]

816. Maung Nu and Hpaung Taw Pyin were burned over a period of several days. Satellite imagery shows the burning and destruction of structures in Maung Nu and Hpaung Taw Pyin by 16 September 2017. The images show that more than 320 structures were destroyed by fire in both locations.[1803]

Image of Maung Nu from 16 September 2017 showing areas of burned structures



Imagery courtesy of DigitalGlobe, 16 September 2017

[1798] LI-055, V-067.

[1799] VI-067.

[1800] K-157.1.

[1801] EI-019, LI-055, V-076, V-079.

[1802] CI-026, CI-109, EI-019, LI-055, LI-079, LI-084, QI-042, WI-019.

[1803] Satellite image analysis prepared for the mission by UNITAR-UNOSAT.

817. Tatmadaw soldiers led the operation in Maung Nu,[1804] with witnesses recognising soldiers from Light Infantry Battalion 564.[1805] Many accounts identified by name one of the soldiers, who appeared to have directly led and participated in the killings of men and boys in the courtyard of the compound.[1806]

Gu Dar Pyin

818. Gu Dar Pyin is a village tract in southern Buthidaung Township, approximately 15 kilometres south of Buthidaung town. There are three ethnic Rakhine settlements, and two larger Rohingya villages. Gu Dar Pyin is the main settlement of the Rohingya population, who know it as Gudam Para. There is one police camp in the village tract, which is located in Kyauk Sar Taing, about a mile from Gu Dar Pyin.[1807]

819. Although the Government did not initially report an ARSA attack in Gu Dar Pyin on or after 25 August 2017,[1808] there are unverified reports of an incident, including a possible explosion on or near a bridge in the vicinity.[1809] The following days saw a significant build-up of security force personnel at the police camp. A large number of Tatmadaw soldiers were seen arriving at the camp, some on motorcycles.[1810] One interviewee saw white sacks being transported to the camp on the motorcycles.[1811] There may also have been a meeting at around this time between the soldiers and Rohingya village leaders.[1812] Information suggests that some local ethnic Rakhine villagers warned Rohingya neighbours that something would happen, urging them to leave.[1813]

820. The Tatmadaw and police conducted an initial operation on around 28 August 2017. Security forces entered the main village of Gu Dar Pyin in the early morning and opened fire from the side of the main road.[1814] It is unclear whether people were killed; one interviewee mentioned that two people might have sustained bullet injuries.[1815] The gunfire caused panic among village residents, who fled. For many, this meant crossing the river running down the eastern edge of the village. One interviewee described how she fled with her children into the forest and then had to cross the river: "Some children died trying to cross the river, as it was raining and the water level was so high."[1816] The operation ended in the early hours of the morning, with the security forces returning to the police camp. A number of villagers returned to their homes.

821. The main "clearance operation" took place the following day, in the early afternoon.[1817] The Tatmadaw led the operation, accompanied by armed police and non-uniformed individuals, identified as ethnic Rakhine. According to one interviewee, the security forces first gathered on a hill above the village. They then surrounded the village and entered from multiple directions. The soldiers and armed police opened fire as they entered, including at people who ran to escape. A large number of Rohingya villagers were shot and killed or injured as they tried to flee, including children. One interviewee

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[1804] CI-026, LI-079, LI-084, QI -042, WI-017.

[1805] EI-019, LI-094, WI-007.

[1806] CI-026, CI-109, CI-195, LI-094, LM-018, V-076, V-077.

[1807] CI-103.

[1808] Although no mention was made of an attack on Gu Dar Pyin at the time, on 3 February 2018, in a response to a media article providing details of the "clearance operation" in Gu Dar Pyin, the Government claimed that an ARSA attack did take place. See Global New Light of Myanmar, "Authorities refute AP's report on mass graves in Buthidaung" (3 February 2018), stating that in Gu Dar Pyin, "security forces were attacked by a combined group of ARSA terrorists, and some 500 villagers had attacked the security forces on 28 August 2017."

[1809] LM-004, V-067.

[1810] CI-103, LI-062, LI-063.

[1811] LI-063.

[1812] CI-103, YI-013.

[1813] LI-065.

[1814] CI-103, LI-062, LI-063, LI-088, YI-013, YI-014, YI-015, YI-016, YI-018.

[1815] LI-062.

[1816] YI-015.

[1817] LI-062, LI-063, LI-064, LI-065, LI-088, YI-014, YI-017.

described how his cousin, a 15-year old boy, was shot dead while trying to untether his family's cows.[1818] Ethnic Rakhine men, armed with local swords known as "da", then killed captured or injured persons by slitting their throats.[1819] The soldiers and armed police also used knives to kill people captured or injured.

822. During the operation, buildings were set on fire by the security forces and ethnic Rakhine men. The Tatmadaw used "launchers" and the ethnic Rakhine used petrol.[1820] Burning the entire village took two to three days.

823. One woman watching from a neighbouring village on the other side of the river described what she saw:

> *The soldiers were shooting at the people, who were running from burning houses to save their lives. People were running everywhere, in the paddy fields, jumping into the river, and hiding in trees. I saw people burning, and people being cut.*[1821]

824. As the security forces had entered the village from three sides, villagers able to flee were forced to head east and attempt to cross the river. Rohingya villagers were shot as they crossed. One interviewee, watching from a hamlet on the other side of the river, described seeing many bodies floating in the water.[1822] Some drowned in the river, including women and children. Another interviewee helped four men on the other side of the river, each with gunshot wounds.[1823]

825. One mother described how she had to choose which of her children to save. The security forces had entered her house and grabbed her young daughter. Her son tried to save his sister and was attacked by the security forces. The mother watched from the other end of the house and made the split second decision that that these two children would not live, but that she could perhaps still save her two younger children. Her husband returned the next morning to the village and dug through pits of bodies until he found the corpse of their son. They never found the body of their daughter. The mother told the Mission with haunted eyes: "How can I continue with my life having made this choice?"[1824]

826. Women and girls were subjected to sexual and gender-based violence, including rape, gang rape and abductions.[1825] They were gang raped by members of the Tatmadaw in bushy and forested areas as they fled.[1826] They were also abducted from their homes, sometimes prior to the main "clearance operation" commencing.[1827] Based on credible reports received, and in light of similar patterns established in other locations, it is likely that abducted women and girls were raped or gang raped. A 50-year old mother said:

> *The soldiers came to my house and took my daughter away. I do not know what happened to her. I saw soldiers taking quite a lot of beautiful girls when we were fleeing.*[1828]

827. Some of those who participated in the operation were recognised as locals from the nearby NaTaLa[1829] village, Kyauk Sar Taing. A short time before the operation was

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[1818] YI-015.

[1819] LI-065, LI-062, YI-014, V-080.

[1820] LI-062, LI-063, YI-014, YI-015, YI-016, YI-018.

[1821] WI-014.

[1822] LI-088.

[1823] YI-017.

[1824] EI-079.

[1825] EI-078, EI-079, EI-080, K-151.

[1826] EI-078, EI-079, EI-080.

[1827] EI-078, EI-079, EI-080, K-151.

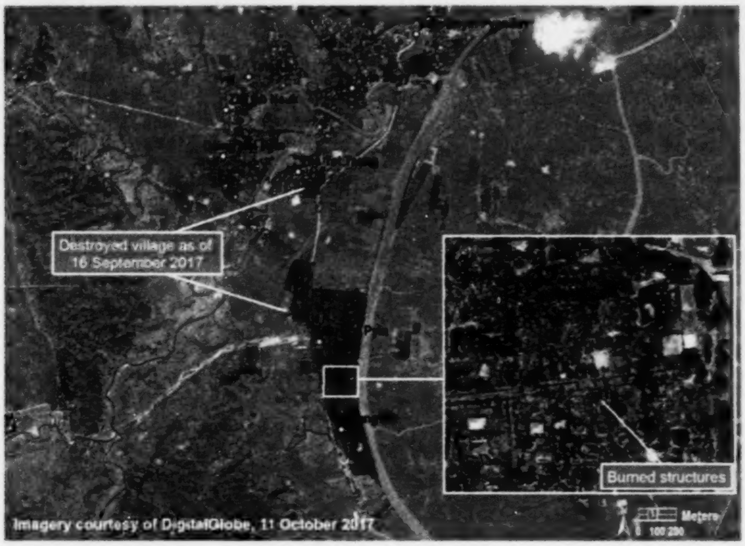
[1828] EI-079.

[1829] The Myanmar authorities have engaged in the policy of building "model villages" since the 1990s taking the name of "NaTaLa" from the Ministry for Development of Border Areas and National Races that designates and establishes them. Farmland was appropriated, and individuals and families were resettled from urban areas to border regions. In northern Rakhine State, "model villages" were largely intended to allow for the resettlement of ethnic Rakhine from other parts of Myanmar, or to encourage persons of ethnic Rakhine origin (and possibly other ethnicities) to move from Bangladesh.

conducted, a new group of men had arrived in Kyak Sar Taing[1830] and it appears they may also have been brought to the village by the Tatmadaw.

828. Satellite imagery analysis confirms that all structures in Gu Dar Pyin were burned by 16 September.[1831]

Satellite imagery analysis from 10 October 2017 showed burning detected on 16 September


Destroyed village as of 16 September 2017
Burned structures
Imagery courtesy of DigitalGlobe, 11 October 2017
Meters
100 200

829. In the aftermath of the operation, numerous corpses were strewn throughout the village. Witnesses saw bodies and in some instances separated heads, showing signs of both gunshot and knife or sword wounds, including in the compounds of houses and a large number in paddy fields.[1832]

830. Efforts were made by the Tatmadaw, police and the ethnic Rakhine men to dispose of bodies. A series of pits were dug in different locations and the bodies put in them.[1833] A number of villagers who returned to Gu Dar Pyin some days after the operation described seeing bodies, uncovered in shallow graves, that were blackened and swollen. Video footage reviewed by the Mission shows blackened and swollen human heads demonstrating putrefactive change (decomposition).[1834]

831. One interviewee, who returned to the village about three days after the operation, described moving some soil away from one of the pits, and seeing many black corpses, with faces looking as though they had been burned. The sight and smell made him nauseous.[1835] Another interviewee described that, when he returned to the village 12 days after the "clearance operation", he saw a big pit of bodies:

> *They were not properly covered so I could see that the bodies were swollen and the faces were black. I could not perform any funerals because the bodies were so*

The apparent purpose appears to have been, at least in part, to transform the demographic profile of northern Rakhine State through increasing the ethnic Rakhine or Buddhist population; K-063.20, K-160.1, K-160.2.

[1830] LI-062, LI-063, LI-065.

[1831] Satellite imagery analysis prepared for the Mission by UNITAR-UNOSAT.

[1832] CI-103, LI-065, YI-016.

[1833] CI-103, LI-062, LI-063, LI-088, YI-016.

[1834] LI-062, LI-063.

[1835] LI-063.

> *rotten. I saw many heads separated from bodies. There were bodies in a number of different places, scattered around. Some were piled together and some were buried in the pits. There were the bodies of women and children. I only stayed in the village for an hour, but it was so horrific that I was crying on the entire journey to Bangladesh.*[1836]

832. Rohingya who escaped took shelter in neighbouring Rohingya settlements across the river, or hid in forest areas.[1837] Some days later, men from the village returned to collect food and other items. However, they again encountered the Tatmadaw and a number were shot and killed as they tried to flee.[1838]

833. Despite the difficulties in calculating the exact number of Rohingya villagers killed during the "clearance operation" in Gu Dar Pyin, Rohingya community volunteers have compiled lists from discussions with villagers who managed to escape the violence. They estimate that 243 persons were killed in the course of the operation.[1839] While the Mission cannot confirm the accuracy of the list, it is consistent with information received that large numbers of people died.

Koe Tan Kauk

834. Koe Tan Kauk (known in Rohingya as Ko Tan Kaung) is a village tract in Rathedaung Township, with a shoreline along the Bay of Bengal, bordering the southernmost tip of Maungdaw. The village tract contained four villages, two Rohingya and two ethnic Rakhine. The largest Rohingya village of Koe Tan Kauk (known in Rohingya as Dun Say Para) had approximately 1,000 households.[1840] The village tract contained two IDP settlements, both of which housed Rohingya who were internally displaced from elsewhere in Rathedaung in 2012.[1841] Within the village tract there was a military compound and a BGP post.[1842]

835. As the location of one of the 9 October 2016 ARSA attacks,[1843] Koe Tan Kauk had been under constant surveillance. This included an increased military presence, resulting in continued and increased oppression of villagers.[1844] In November 2016, torture and mass arrests were carried out as a reprisal for the community engaging with the United Nations Resident Coordinator.[1845] Tensions increased further in August 2017, with threatening meetings demanding that villagers accept the National Verification Card.[1846] Credible reports indicate that the 33rd LID arrived in the village tract around this time,[1847] and may have been responsible for beating one man, who died a few days later.[1848] By mid-August 2017, two navy boats were also stationed off the shore of Koe Tan Kauk.[1849]

836. On 25 August 2017, around 4am, the Tatmadaw alleged that two ARSA attacks took place in Koe Tan Kauk village tract.[1850] Gunshots were heard by residents of both Koe Tan

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[1836] LI-062.

[1837] LI-062, YI-013, YI-014, YI-018.

[1838] CI-103, YI-015.

[1839] K-154.2.

[1840] QI-113, K-158.3, K-158.4.

[1841] RI-002, RI-003.

[1842] CI-116, CI-137, LI-100, YI-007.

[1843] See this chapter, section D.1.c: Arakan Rohingya Salavation Army.

[1844] CI-118, CI-119, CI-181, CI-182, LI-045, LI-053, LI-118.

[1845] See this chapter, section D.1.c: Arakan Rohingya Salavation Army.

[1846] CI-181, CI-182, CI-183.

[1847] CI-181, CI-182, LM-014, V-067.

[1848] CI-181, CI-182.

[1849] LI-045, LI-052, LI-053, LI-100, QI-113.

[1850] Information Committee reported that ARSA attacked the Koe Tan Kauk police station at 4:50 a.m.; "[t]he military columns arrived… at 5:15 a.m. and returned fires [sic]," killing six attackers. Information Committee, "Breaking News 2," (Facebook post, 25 August 2017), https://www.facebook.com/InfomationCommittee/posts/785202504986191

Kauk[1851] and nearby Chein Khar Li.[1852] The Government did not report any casualties; however, it noted that seven ARSA members were killed.[1853]

837. Early on 25 August 2017, Tatmadaw soldiers,[1854] accompanied by other security forces[1855] and ethnic Rakhine,[1856] entered Chein Khar Li from the south,[1857] shooting at villagers.[1858] Some Rohingya ran towards the forested hills[1859] and many people were shot when fleeing.[1860] Others died in more targeted killings by having their throats slit or other stabbings.[1861] Those who returned to the village after the attack found bodies with throats cut and decapitated heads, including those of children.[1862] One survivor who returned to the village recalled:

> *I found my six-month old son's body lying next to my wife's body. She had been shot. My baby son was stabbed in his stomach and his intestine and liver were coming out. When I took his small body into my lap, I was showered with his blood.*[1863]

838. Soldiers then started to burn houses in a systematic fashion, from the south and moving north.[1864] "Launchers" were used,[1865] as well as petrol and matches.[1866] One villager commented: "They burned everything. Not one tree was left."[1867] A number of persons unable to escape, including disabled persons, children and the elderly, were burned inside their houses.[1868] A number of corpses were thrown into burning houses.[1869]

839. On 28 August 2017, the Tatmadaw undertook a further "clearance operation" in Koe Tan Kauk village, one and a half kilometres to the north.[1870] Early that morning, a group of Tatmadaw soldiers, accompanied by other security forces[1871] and ethnic Rakhine,[1872] entered the village from both sides.[1873] The Tatmadaw led the operation, shooting into the village and towards people fleeing.

840. Weapons were also fired towards the village from naval ships that had been stationed just off the shore.[1874] The military also fired "launchers" towards homes.[1875] A number of elderly[1876] and disabled persons[1877] were burned in their houses, with their bodies

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[1851] CI-116, LI-100.

[1852] CI-014, CI-030, CI-031, CI-137, CI-181, QI-003.

[1853] Information Committee, "Breaking News 2" (Facebook post, 25 August 2017), https://www.facebook.com/InfomationCommittee/posts/785202504986191

[1854] CI-014, CI-030, CI-031, CI-137, LI-045, LI-052, LI-053, LI-100, YI -006, YI-007, WI-029, WI-030, V-067.

[1855] CI-137, LI-053, QI-002.

[1856] CI-137, LI-052, LI-053, YI-006, LI-045, K-076.22.

[1857] CI-014, CI-030, LI-052, LI-053, QI-002.

[1858] CI-014, CI-137.

[1859] CI-014, CI-030, CI-031, CI-137, LI-053, WI-029, WI-030, YI-007, V-067.

[1860] CI-030, CI-137, LI-053.

[1861] CI-030, CI-137, LI-045.

[1862] CI-030, CI-137, LI-052, WI-030, YI-006.

[1863] CI-030.

[1864] CI-014, LI-052, LI-053, WI-029.

[1865] CI-014, C-030, CI-137, YI-006, YI-007.

[1866] CI-030.

[1867] LI-045.

[1868] CI-030, CI-137, LI-045, LI-052, LI-053.

[1869] CI-137, LI-053, WI-029.

[1870] CI-116, V-067.

[1871] CI-116, CI-118, LI-100.

[1872] CI-116, LI-100, QI-003, QI-33.

[1873] CI-116, CI-118, LI-100, QI-113, XI-001, K-076.21.

[1874] CI-183, LI-100, QI-113, V-081.

[1875] CI-118, LI-100, QI-33, QI-034.

[1876] QI-113.

[1877] CI-116, CI-119, LI-100, QI-113.

found by relatives who returned to the village in subsequent days to search for survivors or recover food and belongings.[1878]

841. Rape and sexual violence also occurred in both locations. In Koe Tan Kauk village, one man found a young girl naked and bleeding, who told him she had been raped by the military. She died.[1879] The Mission received a report of a man from Chein Khar Li who saw Tatmadaw soldiers rape and kill his wife by slitting her throat, as well as kill his three children, all aged under five.[1880]

842. Satellite imagery analysis from 16 September 2017 confirms that all the Rohingya hamlets and two IDP camps inside the village tract were burned and destroyed. The two ethnic Rakhine hamlets remained intact.[1881]

843. While total numbers of persons killed remain unknown, the number of casualties, as compiled by Rohingya community volunteers in the refugee camps of southern Bangladesh, suggest that 94 Rohingya died in Chein Khar Li and 94 Rohingya died in Koe Tan Kauk, resulting in a total number of more than 180 deaths within the village tract.[1882] While the Mission was not able to verify the number of casualties, it notes that almost every person interviewed reported losing at least one family member in the "clearance operation", with many having lost multiple family members and other credible sources further note significant casualties sustained in this village tract.[1883]

844. The Tatmadaw led the operation, with credible independent sources identifying the presence of the 33rd LID.[1884] Ethnic Rakhine were also involved with neighbours identified, including current and former village chairmen.[1885] Most ethnic Rakhine wore civilian clothes and were armed with swords;[1886] in Chein Khar Li, some wore uniforms and carried guns.[1887] Members of the local ethnic Rakhine militia, active since 2012, were also identified as participating in Chein Khar Li.[1888] In Koe Tan Kauk, ethnic Rakhine were involved in burning houses and looting.[1889]

Southern Maungdaw

845. Southern Maungdaw Township was one of the main targets of the Tatmadaw's "clearance operations" in the initial phase from 25 August 2017. A number of these operations commenced in the early morning on 25 August. In a matter of days, operations were implemented across a vast swathe of territory encompassing dozens of Rohingya villages stretching along the fertile plains between the Bay of Bengal and the forested hills separating Maungdaw and Buthidaung Townships. This was also a region where a number of ARSA attacks took place. The Mission has collected detailed information on the operations in four village tracts, although these are reflective of patterns seen across this area.

Kyauk Pan Du

846. Kyauk Pan Du village tract, known in Rohingya as Shitar Fawrikka, has two Rohingya hamlets and one ethnic Rakhine NaTaLa village. A BGP camp is located in the NaTaLa village.[1890] ARSA attacked the BGP camp in Kyauk Pan Du on 25 August,[1891] and

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[1878] LI-100, QI-034, QI-113.

[1879] XI-001.

[1880] CI-181, CI-182, LI-052.

[1881] K-158.4. Satellite imagery analysis prepared for the Mission by UNITAR-UNOSAT.

[1882] K-153.2.

[1883] See for example, Amnesty International, *We Will Destroy Everything: Military Responsibility for Crimes Against Humanity in Rakhine State* (2018), pp. 76-69.

[1884] K-153.3, V-067.

[1885] CI-030, CI-137, LI-052.

[1886] LI-052, LI-053, YI-006, K-076.22.

[1887] YI-006

[1888] CI-181, CI-183, LI-052.

[1889] CI-016, CI-183, LI-100, QI-002, XI-001.

[1890] LI-130.

there is official reference to ARSA destroying a small bridge nearby.[1892] Rohingya villagers heard gunfire from approximately 3am on 25 August.[1893]

847. The Tatmadaw immediately commenced a "clearance operation" in the two neighbouring Rohingya hamlets, arriving from the direction of the BGP camp. They were accompanied by armed BGP officers and some non-uniformed individuals believed to be ethnic Rakhine villagers, carrying knives.[1894] Members of the 99th LID participated in the operation.[1895] The "clearance operation" lasted for at least two days, resulting in a large number of people killed or injured, and the burning of both hamlets and ultimately nearly all Rohingya property[1896] in the village tract.[1897] On the second day, it is reported that additional Tatmadaw soldiers arrived on foot from the direction of the neighbouring Thin Baw Kwe village tract to the south.[1898]

848. During the operation, as people left their houses, the security forces opened fire with automatic weapons. Fleeing people were shot, injured or killed.[1899] One elderly woman stayed in her house after her family members fled. Her son came back to get her; he was shot in the head and killed.[1900]

849. Knives were used to kill some Rohingya villagers who had been captured or injured.[1901] One witness' brother-in-law was killed after being shot in the thigh and unable to run. He was surrounded by approximately 12 soldiers, two of whom held him, one pulling his head back, while a third slit his throat.[1902] Another witness described how he and his family hid next to a river and watched as four elderly men, who were unable to run fast, were captured and beaten. He later heard they were killed.[1903] A number of people took shelter in paddy fields and ditches between the hamlets and the forested hills; some were killed.[1904] One villager who later returned to the village saw 12 bodies in a ditch, including his father and his niece. He had seen people taking cover there, and believed soldiers found and killed them.[1905] Captured or injured people were also seen being pushed into burning houses by the security forces.[1906] It appears that other persons unable to flee were also burned in their houses.

850. The destruction of the village took at least two days, and involved the use of "launchers".[1907] The whole village was destroyed by fire, including the mosque and school.[1908]

851. Villagers who were able to flee took shelter in the forested hills to the west,[1909] and hid for days in difficult conditions. Some villagers were able to return to their hamlets at night, after the security forces had returned to the camp in the north.[1910] They found a large

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[1891] K-154.2, Information Committee, "Breaking News 2" (Facebook post, 25 August 2017), https://www.facebook.com/InfomationCommittee/posts/785202504986191.

[1892] "Kyaut pandu: At 8:5 am, extremist terrorists blew out a small old-concrete bridge near Kyaukpandu Village." Information Committee, "Breaking News 2", (Facebook post, 25 August 2017), https://www.facebook.com/InfomationCommittee/posts/785202504986191

[1893] CI-138, WI-016.

[1894] CI-138, LI-039, LI-120, QI-013, WI-016, YI-010.

[1895] RI-012, ZI-001, K-153.3.

[1896] Satellite imagery analysis prepared for the Mission by UNITAR-UNOSAT.

[1897] CI-138, LI-020, WI-016.

[1898] LI-120.

[1899] CI-014, CI-138, LI-005, LI-028, LI-039, RI-012, WI-016, ZI-001.

[1900] LI-039.

[1901] LI-039, WI-016.

[1902] WI-016.

[1903] LI-120.

[1904] CI-138, QI-013.

[1905] QI-013.

[1906] LI-005, LI-039.

[1907] CI-138, LI-039, LI-120, QI-013, YI-010.

[1908] LI-039, WI-016.

[1909] LI-120, WI-016.

[1910] LI-028, LI-039, WI-016.

number of corpses and performed funerals for some. One villager who returned recalled burying around 25 of the dead, whose ages varied from 1 month to 80 years old, both male and female. He also saw 10 elderly people who had been burned in their houses.[1911]

852. Ethnic Rakhine villagers looted belongings from Rohingya houses before they were burned, piling items outside which were then removed on vehicles.[1912]

853. After days in hiding, and unable to return home, many villagers left for Bangladesh. One person described walking north to Myin Hlut, known in Rohingya as May Rulla, and spending a night there before it too was attacked, forcing them to flee from a "clearance operation" for a second time.[1913]

854. During the "clearance operation" in Kyauk Pan Du, women and girls were gang raped and subjected to serious physical injuries by members of the Tatmadaw and ethnic Rakhine men. This included mass gang rapes.[1914] A young woman, 20-years old, described her experience:

> *My husband was shot and then he had his throat cut. I was raped. It is so difficult to say what happened. They tore off my clothes, then six soldiers raped me, and after that two ethnic Rakhine men, whom I recognised, raped me. They pressed my breasts and face continuously. My face almost turned blue. I knew the ethnic Rakhine who lived nearby.*[1915]

855. A list of casualties developed by by Rohingya community volunteers in the refugee camps of sourthern Bangladesh put an estimate of deaths at 38. While the Mission has not been able to verify this number, it is consistent with testimony received.

Myin Hlut

> *People were running in different directions, and I wasn't even able to carry my children. Everyone was just running for their lives.*[1916]

856. Myin Hlut, known in Rohingya as May Rulla, is a village tract to the north of Kyauk Pan Du. There are 10 hamlets spread along fertile land near the coast, the majority of which were Rohingya, and with a police post in the western part of the village tract.

857. On 25 August 2017, an ARSA attack took place in Myin Hlut, and the Tatmadaw alleged that two police officers were killed.[1917] Continuous gunfire was heard in the early hours.[1918] One villager described how his family gathered out of fear. Bullets entered their compound. One of his cousins was hit and killed inside his uncle's house.[1919]

858. An initial "clearance operation" in the village started in the early morning of 25 August, with Tatmadaw soldiers and members of the BGP entering from the west and firing weapons at people fleeing and burning properties.[1920] A number of people were shot and died, some while trying to escape.[1921] The security forces also killed people by cutting their throats with knives.[1922]

[1911] WI-016.

[1912] CI-138, LI-120, QI-013.

[1913] LI-120

[1914] EI-007, EI-072, LI-020, LI-039, WI-016.

[1915] EI-072.

[1916] QI-111.

[1917] K-154.2, V-082; Information Committee, "Breaking News 2: Extremist terrorists launch series of attacks on police stations and police outposts in Maungtaw Township" (Facebook post, 25 August 2017).

[1918] BI-002, QI-111, QI-112, YI-010.

[1919] QI-111.

[1920] BI-002, YI-010.

[1921] EI-035, QI-112, WI-022, YI-010.

[1922] WI-020, WI-022.

859. One witness, who hid in a dumping site, recognized BGP members involved in the operation. He knew them from playing football together.[1923] A large number of properties in Myin Hlut West and South were burned by "launchers".[1924] A witness saw the security forces first burning the market buildings and madrassa to the west, then moving through the first hamlet, burning houses as they proceeded. As he ran with family members, he was shot in the leg:

> *Everyone was running for their lives. I was helping my younger sisters to flee. I was shot in the leg and the bullet fractured my leg. I fell down, but my father and uncle carried me to the hamlet next to the forest. There they tried to stop the bleeding.*[1925]

860. The "clearance operation" took several days.[1926] It appears that the security forces first launched operations in the more south-westerly hamlets, closest to the police camp, later moving east and north. They burned buildings as they proceeded. A witness described leaving his house when he saw the security forces approaching:

> *I left my house and ran, but as I was running through a paddy field, I was hit by a bullet in my mouth. I fell down and lay there unconscious. When I regained consciousness, I realised that my mother, brother and sister had come to rescue me and had carried me to the forest. I could see that our house was completely burned, as well as many other houses.*[1927]

861. Some people ran towards Shee Dar, the most northern hamlet, and then towards the forested hills. People, including the injured, women and children, hid in the forest for some days. Persons with serious injuries, received treatment in the forest from a villager with some medical knowledge.[1928]

862. Women and girls were subjected to sexual violence, including rape by members of the Tatmadaw and the police both in their homes and in the forest when trying to escape.[1929] One survivor recalled:

> *The military came to our village. I hid in the toilet outhouse, some distance from our house. I saw that our house was surrounded by 10 soldiers and some police. I was able to see what happened. First they tied up my parents. Then they shot my father and raped my mother; later they killed her too. After this, they burned our house. The toilet was far from the house, so I was able to escape.*[1930]

863. Satellite imagery analysis demonstrates that the Rohingya hamlets of Myin Hlut village tract were burned and destroyed by 16 September 2017. Further satellite imagery analysis shows that the area was bulldozed and cleared of all buildings and vegetation by 13 February 2018.[1931]

864. A list of casualties developed by Rohingya community volunteers in the refugee camps of southern Bangladesh indicate that up to 70 persons were killed in Min Hlut. While the Mission has not been able to verify this number, it is consistent with testimony received.

Ah Lel Than Kyaw

865. Ah Lel Than Kyaw (known in Rohingya as Hassu Rata) is a village tract with approximately six kilometres of coastline. It has seven main hamlets and a large majority Rohingya population. There is a small ethnic Rakhine population in the northeast of the tract. There is also a BGP checkpoint and camp, where Tatmadaw soldiers were based too.

[1923] YI-010.

[1924] BI-014, WI-022, YI -010.

[1925] BI-002.

[1926] EI-017, LI-120.

[1927] BI-014.

[1928] BI-014.

[1929] BI-002, WI-020, V-085, V-127.

[1930] WI-020.

[1931] Satellite imagery analysis prepared for the Mission by UNITAR-UNOSAT.

It appears that the presence of security forces increased significantly at these locations from October 2016 onwards.[1932]

866. At around 4am on 25 August 2017, ARSA launched attacks on the two BGP locations. According to the Government, the Deputy Township Immigration Officer was killed. One police official reportedly stated that 17 participants in the ARSA attack were killed during a three-hour encounter.[1933] The same police official reportedly also stated that he had been given advance warning and had taken the non-Muslim population into the camp for protection.[1934] The sound of gunfire was heard by residents of the village tract, and from neighbouring Chein Khar Li village tract to the north.[1935]

867. A "clearance operation" was launched shortly afterwards[1936] from the BGP camp, with continuous shooting from BGP officers and Tatmadaw soldiers. The security forces moved to various locations, including a football field, and continued shooting towards people's houses and at people fleeing.[1937] One witness stated that he later saw seven or eight people who had been shot dead inside their homes.[1938] The operation caused people to run towards the forested hills, a few kilometres northeast. Later that day, the security forces went to the market area of the village in Zay Kone Tan. Shooting continued there.[1939] According to one witness, these shootings happened after ethnic Rakhine villagers started to loot market stalls, causing a confrontation with local Rohingya stall-owners.[1940] Up to 15 corpses were later found at the bottom of a well in the market area.[1941]

868. The "clearance operation" lasted for at least three days, and led to the burning and destruction of most Rohingya property. One villager described how he returned to his home after the security forces had left and found the burned bodies of his two nephews, two and three years old.[1942] Buildings in the village were still smouldering as late as 6 September 2017, indicating that burnings may have taken place for up to 12 days.[1943] Members of the security forces used "launchers" to burn properties.[1944] Ethnic Rakhine were involved in killings and looting.[1945] One witness stated that Tatmadaw Special Forces reinforcements arrived in the village in the evening of 26 August and that he saw three trucks of soldiers arrive. He believed them to be from the 99th LID. The more intense phase of the operation started the following day, causing those remaining to flee.[1946]

869. While assessing the numbers killed or injured in the village tract is challenging, there are indications that the numbers are high. A list of casualties developed by Rohingya villagers indicate that up to 77 persons were killed in Ah Lel Than Kyaw. While the Mission has not been able to verify this number, it is consistent with testimony received.

[1932] CI-129, CI-192, LI-111, LI-112, ZI-006.

[1933] XI-008, V-083; Information Committee, "Breaking News 2: Extremist terrorists launch series of attacks on police stations and police outposts in Maungtaw Township" (Facebook post, 25 August 2018), https://www.facebook.com/InfomationCommittee/posts/785202504986191, where they state: "Alel Than Kyaw: At 4:50 am, an unidentified number of extremist terrorists attacked Ale Thankyaw police station in Region-8, leaving Deputy Township Immigration Officer Zar Moung dead. The policemen repulsed the terrorists who retreated from the scene."

[1934] V-083.

[1935] BI-012, CI-013, CI-038, CI-039, CI-065, CI-129, LI-111, LI-112.

[1936] CI-013, CI-039, CI-129, CI-187, LI-112, ZI-006.

[1937] LI-068.

[1938] LI-112.

[1939] CI-129, LI-112.

[1940] LI-112.

[1941] CI-129, LI-112.

[1942] CI-035.

[1943] V-083.

[1944] CI-035, CI-129, LI-111, LI-112.

[1945] CI-013.

[1946] LI-112.

870. Villagers from further south observed dead bodies in the village when *en route* to Bangladesh.[1947] One villager from Inn Din stated the following:

> *When we passed though Hassu Rata, I saw 15 dead bodies in different houses, all with bullet wounds. We had planned to sleep there, but decided not to sleep alongside dead bodies.*[1948]

Inn Din

871. Inn Din is a village tract of up to six separate Rohingya settlements, and two small ethnic Rakhine hamlets, one of which is a NaTaLa village. Before the 'clearance operations' the population of Inn Din was approximately 7,000, 90 per cent of whom were Rohingya.[1949] Although there were no ARSA attacks in Inn Din on 25 August 2017, there were attacks on BGP posts in village tracts directly to the north and to the south, in Thin Baw Kwe and Tha Win Chaung.

872. Tensions were heightened in the immediate aftermath of 25 August, with villagers reporting the presence of Tatmadaw soldiers and ethnic Rakhine and a number of shootings which caused injuries to Rohingya villagers.[1950] An ethnic Rakhine man, who had taken his cattle to a forested area, also went missing, and this appears to have further increased tensions.[1951] Other credible reports suggest that many of the ethnic Rakhine residents of Inn Din took shelter in the local monastery, where there were also Tatmadaw soldiers and BGP officers present.[1952]

873. A "clearance operation" was launched across Inn Din in a similar manner to neighbouring village tracts. It was led by the Tatmadaw, with the active engagement of ethnic Rakhine. Over the course of up to a week, the Rohingya settlements of Inn Din were targeted, with the rapid arrival of soldiers and ethnic Rakhine, often in the early morning. Their arrival was accompanied by gunfire and the burning of houses and other Rohingya property, including through the extensive use of "launchers". Men, women and children were killed and wounded. They were shot. They were stabbed or slashed with large knives and swords, including by persons in civilian clothes, believed to be ethnic Rakhine.[1953]

874. Many interviewees saw Rohingya villagers shot or stabbed. One elderly woman, interviewed in a Bangladeshi hospital in mid-September 2017, had seen soldiers setting houses on fire and shooting people, including her elderly neighbour.[1954] A young mother gave a sense of the surprise nature of the operations. She was at home in the early hours of the morning when she heard gunfire. She saw her neighbour's house ignite in flames. Bullets then entered her house and her three-year old son was killed. She ran to the forest with her other children and could see houses across the village burning. She also saw the bodies of her uncle and her brother-in-law, with slit throats.[1955] In another incident, three members of the same family were executed by Tatmadaw soldiers and ethnic Rakhine. A witness, who hid with one of his sons in a latrine, later found the bodies of his other son, his father-in-law and uncle, who had been stabbed and had their throats slit.[1956]

875. At one point there appears to have been an attempt by a large group of Rohingya men to offer some resistance in one of the hamlets, known to the Rohingya residents as Bor Para. Men gathered with the aim of preventing the soldiers and ethnic Rakhine from

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[1947] LI-112, QI-116, YI-010.

[1948] QI-116.

[1949] V-084.

[1950] CI-146, LI-006, LI-130, QI-116.

[1951] LI-130, V-067; Wa Lone, Kyaw Soe Oo, S. Lewis, A. Slodkowski, "Massacre in Myanmar" (Reuters, 8 February 2018).

[1952] V-067.

[1953] CI-029, CI-146, EI-006, EI-008, EI-057, LI-006, LI-027, LI-130, QI-006, QI-051, QI-116.

[1954] EI-006.

[1955] LI-027.

[1956] QI-051.

entering the hamlet. The soldiers opened fire on the group, which then dispersed, with at least one man killed.[1957]

876. Many villagers who were able to escape took shelter in the forested hills to the eastern side of the village tract. Some reported spending up to a week in the hills in difficult conditions under makeshift shelters.[1958] Tatmadaw soldiers also shot into forests where people were sheltering, causing further injuries and possibly deaths.[1959]

877. Other villagers congregated on the beach. Reports suggest that some felt forced to leave the forested hills due to the difficult conditions and lack of food and water, moving to the beach with the aim of continuing on to Bangladesh.[1960] Reuters journalists investigated the separation of 10 men from a group of several hundreds gathered on the beach on 1 September 2017, who were executed the following day.[1961] This account is consistent with information verified by the Mission,[1962] including the account of the wife of one of the men, given shortly after she had arrived in Bangladesh in September 2017. She explained how she and family members had gathered on the beach. Then the men were separated and made to sit in rows with their hands tied behind their backs, including her husband and brother. She had not seen them since and had been told that they were killed.[1963]

878. The "clearance operations" in Inn Din were led and largely undertaken by Tatmadaw soldiers, supported by local BGP officers and ethnic Rakhine. Locally-based soldiers from the Western Command were joined by members of the 33rd LID during the course of the operation.[1964] Some of the ethnic Rakhine who participated were from local villages; they were recognised by Rohingya witnesses.[1965] However, some soldiers and police may also have worn civilian clothes alongside ethnic Rakhine villagers, in an attempt to avoid being recognised as members of the security forces.[1966]

879. Satellite imagery analysis indicates that, by 16 September 2017, the majority and possibly all Rohingya houses and buildings inside Inn Din were burned and destroyed.[1967] The neighbouring NaTaLa village of Pae Youne was untouched. Further satellite imagery analysis shows that, by 16 February 2018, most of the burned Rohingya properties, along with trees and other vegetation, were bulldozed and cleared.[1968]

Other verified incidents

880. "Clearance operations" following the same *modus operandi* took place in numerous other Rohingya villages across northern Rakhine State. The Mission verified, through multiple interviews and other information, "clearance operations" similar to those detailed above in a total of 54 separate locations, and it received first-hand accounts of additional "clearance operations" in a further 22 locations.

881. For example, in northern Maungdaw Township, the Mission verified additional "clearance operations", which saw serious human rights violations against Rohingya, in the village tracts of Kun Thee Pyin,[1969] Tha Man Thar,[1970] Kha Maung Seik,[1971] Pa Da Ga Day

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[1957] CI-146, LI-130.

[1958] CI-146, QI-051.

[1959] CI-029, LI-027, QI-116.

[1960] V-067, V-084.

[1961] Wa Lone, Kyaw Soe Oo, S. Lewis, A. Slodkowski, "Massacre in Myanmar" (Reuters, 8 February 2018).

[1962] CI-146, LI-006, LI-130, QI-051, RI-012.

[1963] LI-006.

[1964] LI-112, ZI-001, V-067, V-084.

[1965] LI-006, LI-027.

[1966] Wa Lone, Kyaw Soe Oo, S. Lewis, A. Slodkowski, "Massacre in Myanmar" (Reuters, 8 February 2018).

[1967] Satellite imagery of Inn Din is reproduced below.

[1968] Satellite imagery analysis prepared for the Mission by UNITAR-UNOSAT.

[1969] LI-015, LI-017, LI-032.

[1970] BI-006, CI-049, CI-050, CI-124, LI-014, LI-103, LI-104, QI-070, WI-048.

Wa Na Li / Net Chaung[1972] and Kyein Chaung.[1973] Similarly, in Buthidaung Township, the Mission verified "clearance operations" in Tin May[1974], as well as in a large cluster of villages, known collectively in Rohingya as Taung Bazar. Multiple Rohingya villages in this region were subjected to a wave of "clearance operations" as soldiers moved from one village to the next over a period of days. These included operations in the village tracts of Mee Chaung Zay,[1975] Nga Yant Chaung,[1976] and Thin Gar Net.[1977]

882. Each of these incidents saw a similar pattern of conduct on the part of the Myanmar military and security forces. There was an attack on the village by Tatmadaw soldiers, and often other perpetrators, the burning of Rohingya property, and the killing and injuring of civilians through indiscriminate shooting or targeted killing, leading to multiple deaths. In many cases, women and girls were subjected to rape and other forms of sexual violence.

(b) Patterns of serious human rights violations by the Myanmar security forces

883. The "clearance operations" constituted a human rights catastrophe. The Myanmar military and other security forces committed human rights violations on a colossal scale, in violation of all basic tenets of international law. The operations had a devastating impact on the Rohingya civilian population, which was targeted, brutalised and terrorised. Thousands of Rohingya villagers were killed and injured. Women and girls were subjected to rape and other forms of sexual violence, and frequently then killed. Children were attacked deliberately and callously and subjected to grave violations. Men and boys were disappeared, probably killed. The arduous journey to Bangladesh caused further death and injury. Rohingya-populated areas across the three townships of northern Rakhine State were deliberately destroyed, in a targeted manner.

Unlawful killings and other forms of excessive and indiscriminate use of force

884. Many Rohingya were killed or injured by indiscriminate shooting. Rohingya villages were approached without warning, usually from more than one direction, and often in the early morning, by armed Tatmadaw soldiers. They were often accompanied by other armed security forces, including the BGP, the Myanmar Police Force and riot police (known as *lon htein*), and frequently by ethnic Rakhine civilians. Members of the security forces, primarily Tatmadaw soldiers of the Western Command and the 33rd and 99th LIDs, shot assault rifles towards the Rohingya villages from a distance, not targeting any particular military objective or making any distinction between ARSA fighters and civilians. Men, women and children were all shot at.[1978] Many victims referred to the

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[1971] CI-002, CI-004, CI-048, CI-104, CI-121, CI-122, EI-014, EI-049, EI-064, EI-089, EI-090, LI-101, LI-102, QI-069, WI-047.

[1972] CI-131, LI-076, LI-113, LI-119, QI-114, XI-003.

[1973] CI-114, CI-123, CI-125, EI-023, EI-028, EI-045, EI-096, EI-097, EI-098, EI-104, LI-031, LI-107, LI-109, LI-110, QI-114, WI-004, YI-023.

[1974] CI-021, CI-115, EI-001, EI-067, EI-068, EI-069, EI-071, LI-056, LI-116, YI-029.

[1975] CI-112, CI-135, EI-021, EI-107, LI-044, QI-[illegible], XI-005.

[1976] EI-093, WI-007, YI-030.

[1977] BI-013, LI-081, YI-031.

[1978] CI-001, CI-002, CI-005, CI-006, CI-007, CI-008, CI-013, CI-014, CI-015, CI-017, CI-019, CI-020, CI-021, CI-024, CI-029, CI-030, CI-033, CI-034, CI-035, CI-040, CI-050, CI-103, CI-105, CI-106, CI-108, CI-118, CI-109, CI-110, CI-111, 112, CI-113, CI-114, CI-115, CI-116, CI-118, CI-120, CI-121, CI-122, CI-123, CI-124, CI-126, CI-127, CI-128, CI-129, CI-131, CI-132, CI-133, CI-134, CI-135, CI-137, CI-138, CI-139, CI-140, CI-142, CI-143, CI-144, CI-146, CI-147, CI-148, CI-149, CI-150, CI-177, CI-178, CI-179, CI-180, CI-181, CI-184, CI-185, CI-186, CI-187, CI-188, CI-189, CI-191, CI-192, CI-193,CI-195, CI-196, CI-197, CI-198, CI-199, EI-001, EI-003, EI-004, EI-005, EI-006, EI-008, EI-009, EI-010, EI-011, EI-013, EI-015, EI-018, EI-019, EI-020, EI-024, EI-027, EI-029, EI-030, EI-035, EI-039, EI-040, EI-041, EI-044, EI-045, EI-047, EI-048, EI-049, EI-050, EI-051, EI-053, EI-061, EI-062, EI-064, EI-065, EI-066, EI-071, EI-076, EI-078, EI-080, EI-081, EI-082, EI-083, EI-097, EI-098,EI-102, LI-005, LI-008, LI-010, LI-011, LI-012, LI-013, LI-015, LI-016, LI-017, LI-018, LI-020, LI-021, LI-022, LI-027, LI-028, LI-030, LI-031, LI-032, LI-036, LI-039, LI-041, LI-042, LI-044, LI-045, LI-046, LI-047, LI-054, LI-062, LI-064, LI-065, LI-067, LI-069, LI-070, LI-072, LI-073, LI-074, LI-076, LI-080, LI-081, LI-102, LI-103, LI-104, LI-105, LI-109, LI-volume of gunfire, with some describing it as "raining bullets".[1979] Many were shot and killed or injured while attempting to flee.

885. Witnesses saw relatives, friends, neighbours or fellow villagers shot and fall down while they themselves were running away, and saw people lying on the ground, shot dead or wounded. One young girl described the operation in Maungdaw Township:

> *When the soldiers came to my village, we all ran, and they shot at us. We were around 50 people, and maybe half of us were shot. The people shot fell down while they were running. Some died and some escaped. Somehow, I escaped.*[1980]

886. Another man described how his wife was shot as they were fleeing their village in Thit Tone Nar Gwa Son Village Tract, Maungdaw Township:

> *I was in my house with my family, and my wife had just finished cooking the rice. We heard shooting and so we ran out of our house. My wife followed me, but she was hit by a bullet in her chest just outside the house. I tried to hold her. Then I realized she was dead. I couldn't carry her body because the shooting did not stop. There was shooting everywhere and I had to run to save my life. I could have been hit by the same bullet but I was lucky.*[1981]

887. Others who had found shelter, such as in nearby forested hills, witnessed fellow villagers being shot. Some who were able to return to their villages in the following days, often at night, saw many dead bodies with bullet injuries.[1982]

888. Many villagers who sustained non-fatal bullet wounds had to be left behind by fleeing relatives, and are presumed dead. The intensity of the "clearance operations" made their rescue impossible. One man from Kyein Chaung village tract, known in Rohingya as Boli Bazar, in northern Maungdaw Township explained the circumstances in which his daughter was killed:

> *I don't know how many people died that day. The military, they were just shooting at whomever. They were shooting at people whenever they saw them, on the streets or in the houses. When they were shooting, there was no time to look back and care for those who were shot. As people were running, they were shooting at them. That is how my daughter died. She was hit fleeing. I couldn't go back and carry her.*[1983]

889. Some people risked their lives to carry injured or otherwise stranded relatives to safety, or to try to recover possessions. One elderly woman stranded in Kyauk Pan Du, Maungdaw Township, was rescued by her son who was subsequently killed. She described what happened:

> *It was complete chaos. All we could hear were the sounds of bullets. All the other family members ran away, but I was an old woman, so I stayed behind. Then my son came back to get me. He helped me and I joined my family. But then he went back to the house to get our belongings and some rice. My son was shot inside our house. The bullet went into the house and hit my son in the head. Later that night, after the military left, I went back to see my son's dead body. He was 30 years old.*[1984]

111, LI-112, LI-114, LI-117, LI-119, LI-120, LI-124, LI-128, LI-130, LI-131, LI-132, QI-001, QI-003, QI-004, QI-008, QI-009, QI-011, QI-012, QI-014, QI-016, QI-023, QI-025, QI-028, QI-029, QI-048, QI-070, QI-106, QI-107, QI-112, QI-113, QI-114, QI-116, RI-002, RI-003, RI-004, RI-005, RI-007, RI-008, RI-010, RI-012, RI-013, RI-016, RI-018, WI-001, WI-002, WI-009, WI-015, WI-017, WI-024, WI-039, XI-001, XI-002, XI-003, XI-004, XI-006, YI-006, YI-007, YI-009, YI-010, YI-011, YI-013, YI-014, YI-018, YI-025, YI-030, YI-031, YI-032, YI-033. V-128, K-061, V-128; See also XChange.com, *The Rohingya Survey* (15 December 2017), where 40 per cent of respondents reported indiscriminate shooting.

[1979] CI-033, CI-112, CI-150, LI-120, QI-036, QI-116, RI-012.

[1980] LI-011.

[1981] YI-009.

[1982] CI-030, LI-028, LI-029, LI-042, LI-074, LI-093, LI-114, QI-002, QI-027.

[1983] LI-107.

[1984] LI-029.

890. The indiscriminate shooting disproportionately affected those unable to move quickly, often children, pregnant women or those with young children, the elderly and disabled persons.[1985] Their dead bodies were often discovered later, with bullet wounds. One man explained what happened to an elderly woman in his village in Kha Maung Seik, northern Maungdaw Township:

> *There was a very old woman in my hamlet, and she was left behind by her family when the military came, as they couldn't help her escape. When I went back to my village a few days later, I saw that she had been shot dead. I saw the bullet wound.*[1986]

891. Some Rohingya villagers who could not flee, or who sought shelter inside their houses, were also shot and killed or injured, when bullets penetrated thatched roofs and bamboo walls.[1987] Villagers were shot in other locations where they had found shelter, including through rapid arms fire into forested hills where they had fled.[1988]

892. Many Rohingya were killed in targeted attacks too. The Mission has provided detailed accounts above of corroborated mass killings perpetrated in the villages of Min Gyi, Maung Nu, Chut Pyin, Gu Dar Pyin, the villages of Koe Tan Kauk. Dozens, and in some cases hundreds, of men, women and children were killed. Additional organized mass killings are likely to have taken place. Witnesses reported seeing bodies of large numbers of Rohingya, including those with gunshot and machete wounds, as well as decapitated heads, in burned villages *en route* to Bangladesh.[1989] The Mission is concerned that other such mass killings remain undocumented. Moreover, other "clearance operations" in the villages of northern Rakhine State verified by the Mission resulted in a significant numbers of casualties, with numbers of killed often in the dozens. These incidents also constitute mass killings, although seemingly implemented in a less organized manner.

893. In addition to these instances of mass targeted killings, members of the security forces shot individual persons, including at point blank range,[1990] and executed people, including those injured, by slitting their throats using long knives. In some cases, these targeted killings occurred as Tatmadaw soldiers and other security forces systematically moved from house to house, pulling people out of their homes and executing them, or shooting them inside their houses, or as they left their houses, often in front of family members.[1991] Ethnic Rakhine, working alongside the Tatmadaw and other security forces, also targeted and killed victims with long knives.

894. A woman from Kyein Chaung village tract, northern Maungdaw Township, saw many family members executed. Her mother-in-law was shot and killed and her husband was shot while fleeing. Two of her children were also killed, while a third child sustained multiple stab wounds to the head, but survived:

> *Soldiers took to me into a house and beat me and my youngest child. He was one and a half years old, and he died as a result of the beating. My four year old son's hand was being held by my daughter, who was also stabbed in the head. He started crying and then the military stabbed him and he died. It was with a long knife, the length of a forearm. After they killed him, the soldiers washed the knife.*[1992]

895. Another man described the killings of a group of women and children inside a house in Kyet Yoe Pyin village tract, Maungdaw Township:

[1985] LI-039, LI-093, QI-014, QI-071, WI-032, YI-018, YI-019.

[1986] LI-102.

[1987] LI-025, LI-027, LI-029, LI-039, LI-041, LI-099, LI-107, QI-111, YI-011.

[1988] WI-007.

[1989] BI-013, CI-014, CI-016, CI-023, CI-183, QI-063, QI-065, QI-116.

[1990] EI-024, LI-011, LI-027, LI-030, QI-035, QI-038, WI-039, WI-007, WI-010, XI-006; See this chapter, section D.1.a: Most serious incidents.

[1991] EI-024, LI-011, LI-027, QI-038 WI-039, XI-006.

[1992] WI-004.

> *A pregnant woman in labour was being assisted by a midwife as well as a number of other female relatives. I saw approximately five soldiers enter the house and heard a few gunshots. Later I went back and saw the dead bodies of an elderly woman, the mother, a two-year old girl, and another girl who was 16 to 18 years old and the new-born baby.*[1993]

896. Tatmadaw soldiers and the ethnic Rakhine used swords, knives or machetes, known locally as "da", to injure and kill, most notably through the intentional slitting of throats of Rohingya villagers. Numerous interviewees shared accounts of such killings that they had witnessed.[1994] One man, who was hiding in a paddy field, watched as a group of soldiers took his 70-year old mother from their house. One soldier slit her throat with a large knife, leaving her dead on the ground.[1995] Another young woman from a village in northern Maungdaw also witnessed her mother's murder: "I was inside our house to get my baby, but just at that moment a soldier took out a big knife and cut my mother's throat. I saw her body fall to the ground."[1996]

897. In some instances, ethnic Rakhine appeared to have a specific role of killing Rohingya villagers who had been shot and injured.[1997] They mostly used the same kind of swords or large knives .[1998] One woman from Maung Ghi Taung (known in Rohingya as Shab Bazar) in Buthidaung Township recalled seeing six people, who had been shot and injured, having their throats slit by ethnic Rakhine using knives.[1999]

898. In some villages, people identified as ethnic Rakhine, who in some instances wore uniforms, were carrying firearms, shooting and killing Rohingya.[2000] At times, they used homemade guns with a single-load function, known locally as "thela" or "jaitani",[2001] while in other cases they used military-grade weapons.[2002] Military-grade guns were also seen being distributed to ethnic Rakhine by the Tatmadaw, in some cases immediately in advance of the "clearance operation" itself.[2003]

899. Other Rohingya were summarily executed while trying to help family members and neighbours, including those being subjected to sexual violence. One woman from Kun Thee Pin, northern Maungdaw, described the following incident:

> *I was inside my house, together with my mother-in-law, my three children, my husband and some other relatives. It was early in the morning when soldiers approached our village and were shooting their weapons. Bullets hit the trees in our yard. I could see that some houses were burning. Then they came straight into our house. They were touching my body and pulling my hair. They pulled off my scarf and tried to undo my dress and to lie on top of me on the ground. My husband tried*

[1993] CI-111.

[1994] CI-029, CI-045, EI-029, EI-034, LI-003, LI-008, LI-010, LI-011, LI-012, LI-013, LI-063, LI-072, QI-028, WI-001, WI-002, WI-009.

[1995] QI-028.

[1996] EI-029.

[1997] EI-030, LI-073, LI-027, LI-065, WI-016 WI-024, YI-014; See this chapter, section D.1.a: Most serious incidents.

[1998] CI-001, CI-029, CI-114, CI-124, EI-030, EI-049, EI-057, EI-066, EI-073 EI-102, LI-003, LI-027, LI-039, LI-062, LI-063, LI-065, LI-071, LI-073, LI-081, LI-104, LI-118, LI-129, QI-004, QI-011, QI-029, QI-066, WI-004, WI-005, WI-016, WI-024, WI-027, WI-036, WI-037, WI-038, WI-041, WI-042, WI-044, WI-048, XI-003, YI-004, YI-014, YI-027.

[1998] CI-001, CI-029, CI-114, CI-124, EI-030, EI-049, LI-003, LI-027, LI-039, LI-062, LI-063, LI-065, LI-071, LI-073, LI-081, LI-104, LI-118, LI-129, QI-004, QI-011, QI-029, QI-066, WI-016, WI-048, YI-014, YI-027.

[1999] EI-030.

[2000] CI-120, EI 003, EI 004, EI-005, LI-052, QI-052, WI-005, WI-027, YI-006, YI-031.

[2001] CI-124, LI-062, LI-065, LI-069, WI-048.

[2002] CI-120, LI-052, LI-054, LI-120, YI-031.

[2003] LI-052, LI-103, YI-031.

> *to stop them and protect me. They shot him straight in the face and then used a big knife and slit his throat. He was 35 years old.*[2004]

900. Rohingya fleeing the "clearance operations" also faced violent attacks at border crossing points, resulting in loss of life and serious injuries. Soldiers opened fire on groups of Rohingya at or close to border crossing points, including large numbers gathered on the shores of the Bay of Bengal or Naf River, while waiting to cross into Bangladesh.[2005] A man from Nga Yant Chaung village tract, Buthidaung Township, described arriving at the Naf River in mid-September 2017 and being fired upon by soldiers. Some of the people ran; others, like him, lay on the ground. He said that 25 people were killed, including three of his relatives.[2006]

901. Soldiers also shot at boats carrying Rohingya to Bangladesh, resulting in further casualties.[2007] One witness explained how the boat she was in was shot at by soldiers as it crossed the Naf River, killing three men and two women.[2008] Another witness described her experience while waiting for a boat:

> *Soldiers started shooting, so we crawled away and lay down behind the plants in the mud. I saw many people being shot at. Dead bodies of men, women and children were floating in the river.*[2009]

902. Soldiers also used large knives to kill or attempt to kill Rohingya individuals crossing the border.[2010] A 13-year old boy explained that he was part of a large group waiting to cross the Naf River when they were attacked by soldiers. The boy was struck with a large knife and his arm was cut, but he managed to escape in the water. He saw the bodies of seven people who had been killed.[2011] The Mission viewed the wound on the boy's arm and found it consistent with wounds from a large knife or other sharp implement.

903. Tatmadaw soldiers also opened fire at groups of Rohingya gathered at the border, causing fear and panic but apparently no casualties.[2012] This gunfire seemed intended to instil fear and ensure Rohingya left Myanmar. Other groups of Rohingya who encountered the military en route were not subject to violence, but were threatened.[2013] One victim explained that he was part of a large group of approximately 200 Rohingya walking towards the border. They encountered a group of soldiers who surrounded them and said that, if they went to Bangladesh and promised never to come back, then they would allow them to go free. If they did not, the soldiers said they would be killed.[2014] Another victim was also approached by a group of armed Tatmadaw soldiers and told explicitly to leave or be killed:

> *We were heading towards one of the main crossing point across the Naf River. We saw armed Tatmadaw soldiers there, who told us: "Go quickly to Bangladesh, otherwise we will kill you."*[2015]

904. Other Rohingya were killed and injured through beatings,[2016] which sometimes targeted the most vulnerable, including children, women and the elderly.[2017] A witness from Chut Pyin, Rathedaung Township, saw soldiers using their rifle butts to repeatedly beat her

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[2004] LI-032

[2005] CI-050, EI-065, LI-030, LI-070, LI-076, LI-077, LI-127, LI-131, QI-069, QI-109, WI-007, XI-006.

[2006] QI-109.

[2007] BI-017, EI-034, EI-065, LI-107, LI-127, QI-026, QI-099, QI-109, WI-007, XI-001.

[2008] EI-034.

[2009] EI-034.

[2010] LI-019, LI-068.

[2011] LI-019.

[2012] LI-099, LI-028.

[2013] LI-099, LI-028.

[2014] LI-048.

[2015] LI-099.

[2016] CI-006, CI-146, EI-024, LI-008, LI-022, QI-018, YI-001.

[2017] EI-052, LI-008, LI-022, LI-061.

70-year old brother in the head until he died. The beating was so severe that part of his brain came out of his head.[2018] A survey estimated that 18.4 per cent of deaths during the "clearance operations" were as a result of beatings, the second highest reported cause of death after bullet wounds.[2019]

905. Another feature of the "clearance operations" was the widespread destruction of Rohingya homes and villages, causing further death and injury through burning. Houses were burned both manually using flammable liquid and matches, and by the use of "launchers", weapons firing a munition that explodes upon impact.[2020] This latter method in particular meant that victims were often caught by surprise and had little time to escape. Death by burning in this manner disproportionately affected vulnerable persons less able to run and escape from the "clearance operations", including the elderly, disabled, young children and pregnant women. Numerous witnesses reported that family members and others were left behind when they fled the fires. Information indicates that the number of people killed in this manner is high and likely underreported.

906. Those who were able to return to their villages reported seeing burned corpses in houses. A man who returned to Kyauk Pan Du in southern Maungdaw saw the burned corpses of 10 elderly people and one younger person inside their houses.[2021] A man from a village in Buthidaung Township was able to return to his hamlet after dark and found around 12 bodies of elderly people who had been burned in their homes.[2022] Another victim from Ta Man Thar in northern Maungdaw Township returned to find the charred bodies of a disabled man and two elderly people in their houses.[2023] A female victim from a village in Maungdaw that was subjected to a "clearance operation" in early September 2017 described her experience:

> *My house was in the west of the hamlet and the military entered from the east. They started burning houses and I could see the flames. My disabled brother had a house in the east. His wife and children fled, but she told me that he was not able to. He burned inside his house, as he was unable to get out. After two days of hiding and watching the village burn, we left for Bangladesh.*[2024]

907. One interviewee described fleeing when soldiers entered his village, Zone Kar Yar in Tha Pyay Taw village tract, southern Maungdaw, and set fire to houses from one end of the village. His 80-year old mother was unable to run. Shortly afterwards, he could see his house burning from where he was hiding. The following day, when he returned to his village, he found the charred body of his mother.[2025] Another witness reported seeing the bodies of his grandmother and his two infant nephews, who had been burned to death in his grandmother's house in Ah Lel Than Kyaw, southern Maungdaw Township.[2026]

908. The Mission further verified a pattern of Tatmadaw soldiers intentionally forcing people into houses that were either burning or about to be set alight, and even locking them inside.[2027] One victim from Ngan Chuang in northern Maungdaw recounted:

> *The military came into my village and burned the houses with launchers. I was inside my house with my children when they locked the door from the outside. The*

[2018] LI-008.

[2019] Médecins Sans Frontiers, "Retrospective mortality, nutrition and measles vaccination coverage survey in Balukhali 2 & Tasnimarkhola camps" (Bangladesh, 2017).

[2020] Details regarding the methods used to burn houses are set out later in this section.

[2021] WI-016.

[2022] QI-007.

[2023] QI-070.

[2024] QI-025.

[2025] QI-012.

[2026] CI-025.

[2027] BI-006, CI-023, EI-007, EI-058, EI-066, LI-005, LI-012, LI-059, LI-071, LI-075, LI-078, QI-049, QI-059, QI-111, WI-003, WI-004, WI-005, WI-016, WI-029, XI-001, YI-008.

> *house was burning, but I was able to break down a bamboo wall and then rescued my children one by one. However, my 11-year old daughter was severely burned.*[2028]

909. During the operations in Min Gyi, soldiers took women and children to houses where they were raped and gang raped, after which the doors were locked and the houses set on fire. Most victims, including young children who had accompanied their mothers, were unable to escape and burned to death. Similarly, in Chut Pyin, a number of people were forced inside houses, which were then intentionally set alight by soldiers.[2029]

910. Multiple accounts were received of people, including babies and children, being pushed or thrown into burning houses by soldiers.[2030] One interviewee reported seeing two young children, six or seven years old, running out of a burning house, only to be pushed back in by soldiers during the operation in Myin Hlut, Maungdaw Township.[2031] An interviewee from Kyauk Pan Du, Maungdaw, also described a group of approximately 10 women, children and elderly persons trying to escape a burning house, but being pushed back inside by soldiers. He saw one soldier stabbing a child, and then pushing the child inside the burning house. The entire group were burned alive in the house.[2032]

911. In a similar incident, a woman from Ku Lar Bil in Thu U Law village tract, Maungdaw Township, described fleeing with her husband and their nine-year old daughter from their burning house. Her husband was holding their daughter's hand but was shot in his leg by a bullet. Their daughter stopped to help him and soldiers dragged them both into their burning house. They were both burned alive. "I wish it had been me holding my daughter's hand, rather than my husband."[2033]

912. Landmines, planted by the Tatmadaw in and around Rohingya villages as part of the "clearance operations" also caused death and injury [2034] On or around 26 August 2017, a group of Tatmadaw soldiers approached Sin Oe Pyin (Ywar Gyi) hamlet, in Maung Gyi Taung village tract, Buthidaung Township. They systematically planted mines along the main road to the village,[2035] with one villager describing them as being placed "15 feet apart".[2036] Once the operations began, the landmines killed and injured many who tried to flee.[2037] As one villager described, "The mines were put at the entrance of the village, that is the only way out so when people were running they stepped on them and died".[2038] Another recalled:

> *Some people were running and were killed by the mines, as they didn't know that they were planted there. Others were hit by the mines as they were coming back from the field. My 18-year old relative died from an explosion coming back from the paddy field just in front of my house.*[2039]

913. Mines laid on pedestrian routes or roads inside northern Rakhine State detonated as villagers fled.[2040] One 18-year old man, who was severely injured in a mine blast, including broken legs and serious burns on both legs and hands, described his experience:

> *When I heard the sound of shooting, I started running towards my village to find my family. As there were checkpoints on the main road, I chose to run along a smaller path so I could reach my family quickly. When I was about 15 minutes away from my village, I was blown up from the ground. It sounded like a huge bomb exploding.*

[2028] LI-071.

[2029] See this chapter, section D.1.a: Most serious incidents.

[2030] EI-007, EI-058, LI-005, LI-059, QI-111, WI-005.

[2031] QI-011.

[2032] EI-007, LI-005.

[2033] EI-058.

[2034] CI-006, CI-007, CI-016, YI-029, V-087.

[2035] CI-132, CI-133, LI-046, LI-114, LI-117, QI-107, XI-004.

[2036] LI-114.

[2037] CI-132, CI-133, LI-046, LI-114, LI-117, QI-107, XI-004, YI-001.

[2038] LI-046.

[2039] LI-114.

[2040] BI-004, CI-001, WI-009, V-087.

> *Then I fainted. I took this path to school often, but had never seen or heard of an explosion on that route before.*[2041]

914. The Government reportedly claimed that only ARSA planted mines in the region.[2042] Although ARSA did use improvised explosive devices (IEDs) in their 25 August attacks, there is no information to support a claim that ARSA had access to, or used, landmines.[2043] The Tatmadaw claimed to have recovered IEDs used by ARSA, but they have made no such claim in relation to landmines.[2044]

915. *Medicins Sans Frontiers* reported that between 25 August and 3 December 2017, its clinic in Kutupalong refugee camp treated 224 people with violence-related injuries, and the number of people presenting with gunshot wounds started to decrease only after 25 September 2017.[2045] This confirms the Mission's conclusion that violent "clearance operations" continued well beyond the Government's declared end date of 5 September 2017.

916. The Mission met with a large number of victims who sustained injuries during the "clearance operations". It should be noted that, for the most part, it is the "walking wounded", those who have sustained less serious injuries and survived the journey to Bangladesh, who were able to meet Mission members, and from whom forensic information could be gathered. The Mission conducted forensic analysis of photo-documented injuries, and in some cases the medical records, of more than 50 victims whom the Mission also interviewed. This has allowed for an objective assessment as to whether the injuries corroborate specific allegations, and as such contributes to the overall assessment of the credibility and reliability of witnesses. In general, the forensic assessment of the documented injuries has provided additional corroboration of allegations, sometimes strong corroboration. In a small number of cases, the information was neutral, because of lack of detail or non-specificity of injuries, and in only one case has the information undermined the credibility of the allegation made. In general, where the injured victim is a child, the very presence of an injury such as a gunshot wound is itself of great concern.

917. Illustrative examples of additional corroboration that forensic analysis has provided include: (1) a schoolboy from Tha Yet Oke, Maungdaw Township, who was the victim of a land-mine explosion and sustained extensive burns to all four limbs and a fracture of the right lower leg[2046]; (2) a 10-year old girl from Chut Pyin, Rathedaung Township, who was shot twice while crawling on the ground and had two untreated gunshot wounds in her legs[2047]; (3) an 11-year old girl from Ngan Chaung, Maungdaw Township, who suffered an extensive burn injury when her home was hit by a "launcher" and set on fire[2048]; and (4) a 10-year old girl from Kyein Chaung, Maungdaw Township, who suffered multiple sharp force head wounds from repeated blows from a large knife inflicted by a Tatmadaw soldier.[2049]; and (5) a 45-year old woman from Myo Thu Gyi, Maungdaw Township, who was shot in both feet while attempting to flee.[2050]

918. Clinics, including the Sadar Hospital in Cox's Bazar and Chittagong Medical College Hospital, both in Bangladesh, also treated patients with violence-related injuries. Many private hospitals and clinics in southern Bangladesh also treated Rohingya patients. Other medical reports from clinics and medical professionals who treated gunshot victims

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[2041] BI-004.

[2042] V-088.

[2043] See this chapter, section D.1.c: Arakan Rohingya Salvation Army.

[2044] Global New Light of Myanmar, "Information released by the Tatmadaw True News Information Team on the findings of the Investigation Team in connection with the performances of the security troops during the terrorist attacks in Maungdaw region, Rakhine State" (14 November 2017).

[2045] Médecins Sans Frontiers, Retrospective mortality, nutrition and measles vaccination coverage survey in Balukhali 2 & Tasnimarkhola camps (Bangladesh, 2017).

[2046] BI-004.

[2047] LI-009.

[2048] LI-071.

[2049] WI-004.

[2050] WI-011.

in Bangladesh have confirmed that many patients, including women, children and the elderly, had bullet entry points from behind, consistent with being shot while fleeing.[2051]

919. No consolidated data is available on the numbers who received treatment or the nature of their injuries. Moreover, many Rohingya in Bangladesh did not seek treatment for their injuries, due to difficulties accessing services in the camps in Bangladesh, particularly in the initial weeks and months when demand greatly exceeded available services. The Mission observed that a number of its interviewees in Bangladesh, with serious bullet or stabbing-related wounds, had not sought medical treatment. It appears that, for many Rohingya, the practice of not seeking professional medical care, even for serious injuries, has been normalised by the lack of access to professional medical services in northern Rakhine State.[2052]

Rape, gang rape, and other forms of sexual violence

920. Rape and other sexual and gender-based violence were perpetrated on a massive scale during the "clearances operations" from 25 August 2017. This includes mass gang rapes, sexually humiliating acts, sexual slavery and sexual mutilations.[2053] Rohingya women and girls were the main victims, although there were some instances involving men and boys. Young women and girls were particularly targeted for sexual violence and were disproportionally affected. The main perpetrators were the Tatmadaw, although other security forces, and sometimes ethnic Rakhine men, were also involved.

921. Mass gang rape, involving multiple perpetrators and multiple victims in the same incident, was a notable pattern,[2054] and occurred in at least ten village tracts between 25 August and mid-September.[2055] The Mission received further credible reports of mass gang rapes in a number of other locations. Mass gang rapes were commonly perpetrated in open public spaces, in front of family and neighbours, within forested areas near the village;[2056] in large houses within the village;[2057] and during detention in military and police compounds.[2058] In some incidents, up to 40 women and girls were raped or gang raped together.[2059] Women and girls were commonly raped by more than one perpetrator, frequently by many perpetrators, sometimes as many as ten.[2060] In Kyein Chaung, north Maungdaw Township, a 35-year old woman spoke of being brutally gang raped by nine men near her house:

> *I was eight months pregnant. They stamped and kicked my stomach with their boots, and then stripped me naked. I recognised some of the Tatmadaw from the local camp. I was blindfolded and hung by my wrists from a tree. I was raped nine times, both anally and vaginally. I counted all of them. Whilst they were raping me, they bit me on my breasts and neck. They left me tied to the tree. My mother found me in the evening. My unborn baby died.*[2061]

Another female survivor told the Mission, "I was lucky, I was only raped by three men".[2062]

[2051] K-155, V-085.

[2052] See chapter V.B.3: Restrictions on access to food, livelihoods, health care and education.

[2053] Women and girls were also subjected to sexual assault during body searches for jewellery and money.

[2054] EI-001, EI-030, EI-038, EI-039, EI-065, EI-067, EI-073, EI-075, EI-080, EI-081, EI-089, EI-094, EI-097, EI-098, LI-105, K-128.

[2055] In Maungdaw: Kha Maung Seik (Fwaira Bazar), (Min Gyi) (Tula Toli), Kyein Chaung (Boli Bazar), Kyauk Pan Du (Shitar Fawrikka); in Buthidaung: Ba Da Kar (Fati Yaar), Nga Yant Chaung (a) Taung Bazar (Nga Yant Chaung), Chin Tha Mar (Hang Sar Para), Gu Dar Pyin (Gudam Para), Maung Gyi Taung (Shab Bazar) and in Rathedaung: Chut Pyin (Shuap Praung).

[2056] EI-021, EI-027, EI-030, EI-064, YI-030.

[2057] CI-042, CI-046, EI-021, EI-080, EI-081, QI-052, QI-060, QI-071, WI-038, K-128

[2058] EI-023, EI-028, EI-064, EI-066, EI-086, EI-094, EI-097, K-151, K-127.

[2059] EI-007, EI-055, LI-037.

[2060] EI-007, EI-014, EI-057, EI-096, EI-102.

[2061] EI-096.

[2062] EI-075.

922. Often, mass gang rape took place after the separation of women and girls from men and boys.[2063] In some instances, women and girls were brought to houses where Tatmadaw soldiers were waiting, including men in camouflage and with helmets.[2064] After entering the houses, women and girls were beaten, stripped and brutally raped or gang raped in common spaces or in separate rooms, toilets or other areas.[2065]

923. For example, a young woman, from a village in Kyet Yoe Pyin, Maungdaw Township, explained how she was taken by members of the Tatmadaw, together with 20 to 30 other women and girls, to a large house in the village. The women were then taken to different rooms to be raped.[2066] An 18-year old woman from Maung Gyn Hanut, Buthidaung Township, described how she and a group of 12 women and girls were gang raped in a forest area. She was raped by two soldiers and she saw the other women and girls being taken away by soldiers and heard screaming. Later, these women told her that they were also raped.[2067] In nearby Nga Yant Chaung, Buthidaung Township, a 23-year old woman described how villagers were first gathered in the centre of the village, and then soldiers took her and other women to forested areas in groups of four and five. She was raped by two soldiers, whom she recognised from the local military compound, and saw many other women being raped.[2068]

924. One of the most brutal scenes took place in Min Gyi, Maungdaw Township.[2069] Tatmadaw soldiers took dozens of women and girls to large houses. Upon arrival, each group was taken to a different room. Once in the room, women and girls were stripped and beaten with sticks, punched or stabbed. They were then raped in groups of up to seven victims at a time.[2070] Many of the women and girls had infants and children with them, who were killed or severely injured, while their mothers were raped.[2071] The houses were then often locked and set on fire and most victims who were still alive were burned to death.[2072] A few women survivors described how they regained consciousness when the houses were being burned, and saw dead women and children in the rooms.[2073] Survivors who escaped from the burning houses exhibited serious burn marks and knife wounds to the head and neck.[2074] The Mission conducted forensic analysis of the injuries to one woman with extensive burning to her right side, including her outer right leg, hand and wrist and right forehead and cheek. The burn-scarring pattern is additional corroboration of her account of being awoken in a burning house while lying on the floor and as burning material fell upon her with her right side uppermost. This awoke her, and she was able to escape.[2075]

925. The rapes of Rohingya women and girls were particularly brutal, often accompanied by acts of sexual humiliation and physical and mental torture. Many victims were injured before the rapes began - beaten with guns, sticks, wire and fists, and kicked in the stomach or the head.[2076] Injuries included broken bones.[2077] Once the women and girls were subdued, their clothes were torn off.[2078] One survivor stated that the soldiers had brought scissors with them, "in case they could not tear off my clothes".[2079] Many women and girls were

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[2063] CI-034, CI-042, CI-046, EI-021, EI-080, EI-081, EI-097, QI-052, QI-60, QI-072, WI-038, K-151.

[2064] EI-057, EI-065, EI-080, EI-081.

[2065] CI-042, CI-046, EI-080, EI-081, EI-097, QI-052, QI-060, QI-072, WI-038, K-151.

[2066] EI-097.

[2067] EI-030.

[2068] EI-021.

[2069] See this chapter, section D.1.a: Most serious incidents.

[2070] CI-042, CI-046, EI-080, EI-081, QI-60, QI-071, WI-038, K-150, K-151.

[2071] CI-042, CI-046, EI-080, EI-81, QI-060, QI-071, WI-038, K-150, K-151; See this chapter, section D.1.a: Most serious incidents.

[2072] CI-042, CI-046, EI-080, EI-81, QI-060, QI-071, WI-038, K-150, K-151; See this chapter, section D.1.a: Most serious incidents.

[2073] EI-80, EI-081.

[2074] EI-80, EI-081.

[2075] EI-102.

[2076] EI-007, EI-029, EI-057, EI-083.

[2077] EI-029, EI-057, EI-083.

[2078] EI-083, EI-089, XI-001.

[2079] EI-089.

seen running naked in forested areas in visible distress and eyewitnesses believed that they had been raped.[2080] Blindfolds were commonly used.[2081] Often, one member of the Tatmadaw would hold the victim down, often gripping her wrists, while another would rape her. They would then change places.[2082] In some instances, women and girls had their legs tied to doors.[2083] Others were strung up naked to trees in the forested areas, either by their hands or by their hair.[2084]

926. During rapes, women and girls were frequently bitten on the cheeks, neck, breast and thigh.[2085] The bite marks were still visible months afterwards to members of the Mission, United Nations doctors and counsellors. The bite-marks and other mutilations have left permanent scars on the survivors and serve as a constant reminder to them, their husbands, family and community of the violations and humiliations they have been subjected to. Due to the substantial portion of women and girls affected, it is difficult to believe that this was not an intentional act and akin to a form of branding. The Mission conducted forensic analysis of such injuries. For example, it was able to additionally corroborate the information of a 15-year old girl from Maungdaw who was mass gang raped with three other girls by Tatmadaw soldiers. Forensic analysis confirms two violent bite marks, one on each cheek, sustained during the rape.[2086]

927. Many victims were killed after being raped. Most had their throats slit, or were burned to death.[2087] A large number of interviewees saw dead bodies of women and girls *en route* to Bangladesh who they thought had been raped, because the bodies were naked and large amounts of blood were visible between their legs.[2088] A number of interviewees said that girls had been "raped to death",[2089] because of unusual amounts of blood in the genital area. In some instances, the genital area, or their breasts, appeared mutilated.[2090] Death may have been caused by genital trauma,[2091] especially when a woman had been gang raped, or women and girls may have been raped with instruments, such as knives or sticks, which caused internal organ damage, leading to death.[2092]

928. Frequently, rapes took place in front of family members, including husbands, parents and young children.[2093] A mother from Inn Din described how her adult daughter's legs were tied to different doors and she was raped by 10 male perpetrators. Her daughter's throat was then slit and the house set on fire.[2094] Mothers were often gang raped in front of their young children,[2095] who were often ill-treated, and sometimes killed.[2096] A mother from Nga Yant Chaung saw her seven-year old son killed with a large knife while she was being gang raped by five men in police uniform.[2097] Many women and girls stated that the rape itself was only one aspect of their suffering. The loss of family members, particularly children or unborn children, was described by mothers to the Mission as "unbearable".[2098]

[2080] EI-011, EI-014, EI-022, EI-076, EI-094, LI-105, XI-001.

[2081] EI-069, EI-086, EI-089, EI-096, EI-098.

[2082] EI-027, EI-089.

[2083] EI-034, EI-057, EI-078, EI-102.

[2084] EI-096, EI-098, LI-105.

[2085] EI-011, EI-014, EI-022, EI-076, EI- 094, XI-001.

[2086] CI-045.

[2087] EI-014, EI-064, EI-065, EI-067, EI-075, EI-076, EI-080, EI-081, EI-088, EI-094, EI-098.

[2088] EI-067, EI-077, EI-078, EI-095, XI-001.

[2089] EI-064, EI-067, EI-092, LI-081, LI-105, WI-006, WI-027.

[2090] EI-064, EI-067, EI-092, LI-081, LI-105, WI-006, WI-027, XI-001.

[2091] K-124.

[2092] K-124.

[2093] EI-027, EI-029, EI-057, EI-071, EI-083. See below in this section, Attacks on and grave violations against children.

[2094] EI-057.

[2095] EI-025, EI-029, EI-083; See below in this section, Attacks on and grave violations against children.

[2096] EI-044, EI-071, EI-083; See below in this section, Attacks on and grave violations against children.

[2097] EI-083.

[2098] EI-083, EI-096.

929. The "clearance operations" also involved the systematic abduction and detention of women in military and police compounds and bases, where they were then raped or, more commonly, gang raped.[2099] Parents, relatives and neighbours reported that they saw women and girls being forcibly taken by the Tatmadaw who were not seen again. A large number of Rohingya women and girls remain missing, presumed dead. The Mission received examples of the Tatmadaw demanding a number of women or girls to be brought to their compounds.[2100] A young woman from Dar Gyi Zar, Maungdaw Township, described how she and 20 other women and girls went to the local military compound when such a demand was issued in late August 2017. They were locked in a room for three days, and the two youngest girls, aged around 13 or 14 years old, were taken to the next room. Ten Tatmadaw soldiers entered the room and she heard screaming. A few hours later, the girls' dead bodies were carried out. They were naked from the waist up, had blood in their genital area, and bite marks on their faces or scratches on them.[2101]

930. In and around Buthidaung town, women and girls were systematically abducted, detained, gang raped and killed in military and police compounds during the "clearance operations." An 18-year old woman from a village near Buthidaung town was detained and gang raped for five days in a military compound. She could hear women in other rooms screaming during her detention. She believed that there were up to 20 other women detained and raped.[2102] In the third week of September 2017, a 40-year old female eyewitness saw military vehicles arrive at the military compound in Buthidaung town and unload a group of approximately 10 girls aged between 12 and 18. She saw them being stripped naked by the soldiers before she ran away.[2103]

931. The abduction and gang rape of women and girls also took place at the military compound next to Gu Dar Pyin village, Buthidaung Township, on the day of the "clearance operations" in that village.[2104] A woman described watching her 15-year old daughter being forcibly taken by soldiers to the compound, along with other girls: "My daughter cried out to me to save her. I watched her taken away until I couldn't see her anymore. There is not a day that I do not cry."[2105] On the same day, another woman saw her 15-year old daughter being taken away by soldiers from their house, while her elder son tried to intervene. She and her husband escaped with their younger children. Her husband returned the next day and found the body of their son. They do not know what happened to their daughter.[2106]

932. Tatmadaw was the main perpetrator of sexual violence. A total of 80 per cent of incidents of rape corroborated by the Mission were of gang rape, and 82 per cent of these gang rapes were perpetrated by the Tatmadaw. Incidents of rape and sexual violence were also carried out by members of the BGP, the Myanmar Police Force and ethnic Rakhine, although considerably less so.[2107] Although the majority of Rohingya women and girls do not understand Myanmar language, those who did described the use of derogatory language during rapes. One woman, gang raped with her sister, reported a member of the Tatmadaw saying, "We are going to kill you this way, by raping. We are going to kill Rohingya. We will rape you. This is not your country."[2108] Another woman from Kha Maung Seik, Maungdaw Township, reported a soldier saying, "We will rape you and kill you" and using insulting terms such as "Kalar".[2109]

[2099] EI-022, EI-064, EI-078, EI-079, EI-080, EI-083, EI-086, XI-001.

[2100] EI-022, EI-083.

[2101] EI-022.

[2102] EI-086.

[2103] EI-064.

[2104] EI-078, EI-079, EI-080, K-151.

[2105] EI-078.

[2106] EI-079.

[2107] EI-075, EI-083, EI-084, EI-088, EI-098, EI-093.

[2108] EI-084.

[2109] EI-090.

933. Women and girls of reproductive age were targeted. A review of interviews conducted by the Mission, together with other information received, shows that the most common age range for rape and gang rape was approximately 13 to 25 years old. Soldiers would commonly select unmarried women or girls.[2110] It is unclear whether pregnant women were specifically targeted but many were raped, and many suffered miscarriages or their babies died following rape, including one woman who was eight months pregnant.[2111] Older women were also victims of sexual and gender-based violence, as were very young girls.[2112]

934. Victims frequently complained of severe pain in their genital area, severe blood loss, pain in their abdomens and severe pain on urination.[2113] Women and girls often had to be carried to Bangladesh by husbands, brothers, sons or neighbours because they could not walk.[2114] Months after being raped, victims still suffered from severe injuries that prevented them from having sexual intercourse with their husbands, and women voiced concerns that their husbands would leave them and that they would no longer be able to have children.[2115] A woman from Laung Don, Maungdaw Township, underwent a hysterectomy in Bangladesh due to injuries sustained because of gang rape.[2116] Injuries were exacerbated by lack of access to healthcare *en route* to Bangladesh and on arrival. The Mission received information of women and girls who died *en route* due to the severity of injuries and lack of medical care.[2117] There was also limited or no access to medication to prevent pregnancy or to treat sexually transmitted diseases or genital trauma. Many did not realise that they could seek medical care in Bangladesh, or feared it, due to their discriminatory experiences and the effective denial of health care to them in Myanmar or their fear of family and community shaming.

935. Many women and girls became pregnant from rape but the number is unknown. In May-June 2018, the United Nations and other organizations noted a spike in the number of pregnant women and girls in the refugee camps in Bangladesh.[2118] In spite of its public dismissal of "fake rapes" following the 2016 violence,[2119] the Government of Myanmar has implicitly accepted that large numbers of rapes occurred and many babies were born as a result of the rapes. The repatriation agreement it signed with Bangladesh has a clause, section 6(v), that appears to specifically address the issue of babies born of rape: "Children born out of unwarranted incidents are to be certified by a court of Bangladesh."[2120]

936. Medical clinics reported an increased request for late term pregnancy terminations in March and April 2018, and girls aged 13 to 17 requested terminations from clinics stating that they had been raped by the Tatmadaw.[2121] Health clinics have performed terminations when requested, consistent with the laws of Bangladesh ("menstrual regulation"). Doctors and counsellors reported that, if they were unable to obtain medical terminations, women

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[2110] EI-014, QI-052, WI-004.

[2111] EI-014, EI-073, EI-083, EI-096.

[2112] EI-067, EI-068, EI-048, V-138.

[2113] EI-029, EI-025, EI-030, EI-071, EI-083, EI-089

[2114] EI-074, EI-081, EI-083, EI-090.

[2115] EI-025, EI-029, EI-030, EI-083, EI-089.

[2116] K-151.

[2117] CI-034, QI-061.

[2118] V-139, "More than 60 Rohingya babies born in Bangladesh refugee camps every day"– UNICEF, 17 May 2018. Available at: https://www.unicef.org/press-releases/more-60-rohingya-babies-born-bangladesh-refugee-camps-every-day%E2%80%93-unicef.

[2119] V-254, V-255. The "fake rape" charge appeared as a banner on the Facebook page of the State Counsellor's Office (screenshot on file with the Mission). It is discussed in detail in chapter X, section B.2.a: Case study 1: the use of rape and other forms of sexual violence by the military. See also: http://www.statecounsellor.gov.mm/en/node/545.

[2120] "Arrangement on return of displaced persons from Rakhine" between the Government of the People's Republic of Bangladesh and the Government of the Republic of the Union of Myanmar (Naypyidaw, 23 November 2017).

[2121] KI-129.

and girls have resorted to unsafe terminations. Women and girls have used locally-derived abortifacient potions or abortifacients obtained in Bangladesh, which are toxic to both the woman and the foetus.[2122]

937. Babies born of rape are a constant reminder to their mothers of the events endured and may be resented. Cases of infanticide and the killing of pregnant adolescent girls were reported to the Mission by counsellors in Bangladesh.[2123] Rape survivors also face stigmatisation. Many women and girls who have survived sexual violence live in fear of their husbands, family or community finding out.[2124] For unmarried women, this is heightened. In general, if it is known that a girl has been subject to sexual violence, it is unlikely that she will marry.

938. The circumstances in the vast overcrowded refugee camps in southern Bangladesh mean that women and girls continue to be at risk of sexual violence and, in particular, sexual exploitation and abuse. The Mission is concerned about reports of human trafficking for the purpose of sexual exploitation and abuse. Women are also reportedly facing increased levels of family violence in the camps.[2125]

939. Women and girls were not the sole victims and survivors of sexual violence during the "clearance operations". The Mission received credible reports of sexual violence against men and boys, including rape,[2126] genital mutilation[2127] and sexualised torture, sometimes leading to death.[2128] The scale of this sexual violence remains unknown. The patriarchal nature of the Rohingya community, combined with the centrality of religious leaders in the community, make it extremely difficult for men and boys to discuss sexual violence against them. Isolation, attachment to cultural references and low levels of education further prevent an accurate assessment of the extent of sexual violence against men and boys.

940. During detention, which was prevalent during the "clearance operations", there are consistent credible reports of men and boys being subjected to sexual violence, including rape, sexualised torture and humiliation by authorities or in their presence.[2129] The extent of sexual violence against men and boys in northern Rakhine throughout this period warrants further investigation.

941. Individuals, families and the wider Rohingya community have been highly traumatised by the brutal sexual violence, which they suffered or witnessed. Rape was used as a form of torture, to terrorise the community and as a tactic of war. It continues to have a devastating and lasting impact on the individuals who suffered from it, their families and the wider Rohingya community, both physically and mentally. The Mission has concluded that the widespread sexual violence and the manner in which it was perpetrated was an intended effort, at least in part, to weaken the social cohesion of the Rohingya community and contribute to the destruction of the Rohingya as a group and the breakdown of the Rohingya way of life.[2130]

Attacks on and grave violations against children

942. During the "clearance operations", infants and children were indiscriminately killed and in some instances targeted for killing.[2131] Infants and children were frequently killed by

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[2122] K-124.

[2123] K-124.

[2124] K-124.

[2125] K-124.

[2126] K-130, V-134.

[2127] EI-092, EI-096, LI-022.

[2128] EI-092, EI-096.

[2129] K-151, V-134; See this chapter, section D.2.b: The build-up to 25 August 2017.

[2130] K-122, K-124.

[2131] CI-045, CI-131, CI-136, CI-137, LI-024, LI-025, LI-026, LI-094, LI-099, LI-105, LI-112, LI-115, LI-119, LI-148 gunfire, stabbed or burned to death.[2132] A health survey produced by *Médecins Sans Frontiers* observed that, after 25 August 2017, 57.5 per cent of child deaths under the age of five resulted from violence and, of those deaths, 56.5 per cent of children died from gunshot wounds.[2133]

943. In some instances, children were targeted for killing and their parents were left alive.[2134] A 23-year old woman from Chin Tha Mar, Buthidaung Township, described:

> *I was able to see the killings through the door crack to the yard. When the soldiers started shooting, all women were screaming. They even killed an eight-year old child. During the night, I escaped and I saw so many dead bodies including children. Most of the children were boys, but there were girls too.*[2135]

944. A father from Kyauk Chaung village tract, Maungdaw Township, recalled:

> *A son and daughter of mine were taking a bath in a pond. I was about to call them in to have some food. They were six and four years old. My son was shot in the head. My daughter then fell to the floor and was screaming. Then there was a second shot. They shot my daughter in the chest. The ricochet of the bullet hit me in the foot. I saw that the shots had come from the soldiers standing about 20 feet away from us.*[2136]

945. In Kyet Yoe Pyin, Maungdaw Township, one witness described finding the bodies of a two-year old girl, a baby and a teenage girl in a yard,[2137] while another described how he saw two young children, who were searching for their mother, being killed by soldiers. One six-year old boy had his throat cut, while a four-year old was stamped to death, before the body was thrown into a nearby burning house.[2138]

946. Children and infants were disproportionally impacted by destruction of villages by fire. Large numbers burned to death in houses, unable to escape.[2139] Infants and young children were often sleeping when houses were set on fire, were the slowest to leave, or were too frightened to leave. They were also forced back into the burning houses by Tatmadaw soldiers or others.[2140] A 14-year old boy from Kyauk Pan Du, Maungdaw Township, described how he saw around 10 people, mainly children, but also some women and elderly, being pushed back into a house by members of the Tatmadaw during the "clearance operations". One of the children was stabbed when the group tried to leave the house. The soldiers then set the house on fire and the witness believed that all inside died.[2141]

947. Children and infants were also killed while their mothers were being raped or gang raped.[2142] While a woman was gang raped, her 10-year old son was killed with a knife in Tin May, Buthidaung Township.[2143] Another mother from Zay Di Pyin, Rathedaung Township, recounted:

> *I don't know how many policemen raped me, it was not my priority. The only thing I can remember is that they were trying to take my children. They dragged my son*

[2132] CI-013, CI-019, CI-035, CI-045, CI-131, CI-136, CI-137, EI-080, LI-024, LI-025, LI-026, LI-054, LI-073, LI-094, LI-099, LI-105, LI-112, LI-115, LI-119, QI-036, WI-004, YI-009; YI-028, YI-030, V-138.

[2133] V-086.

[2134] EI-038, EI-075, LI-085, WI-004, K-076.25, K.076.26.

[2135] LI-079.

[2136] QI-026.

[2137] CI-111.

[2138] CI-137.

[2139] EI-001, EI-007.

[2140] CI-049, CI-137, LI-042, LI-135.

[2141] EI-007.

[2142] EI-071, EI-075, EI-081, EI-083, EI-102.

[2143] EI-071.

> *from under the bed. I was screaming to protect my children. I have not seen my son again.*[2144]

948. Children were also disproportionately affected by the conditions in which they fled, having to sleep in the open in the forested hill areas and needing to cross rivers and the sea to reach Bangladesh. Many children and infants drowned, as they could not swim, particularly with the high water levels of monsoon season. Others drowned when boats capsized.[2145] An 18-year old woman from Kyein Chaung, Maungdaw Township, described seeing four children drown when their boat capsized.[2146] Parents also often became separated from their children en route.[2147] A mother fleeing the "clearance operations" in Gu Dar Pyin, Buthidaung Township, lost her six-year old daughter in the crowd of people fleeing. She never saw her again.[2148] A large number of children fled from Myanmar alone or with only their siblings.

949. A 12-year old boy from Gaw Du Thar Ra (Ywar Thit Kay), Maungdaw Township, told the Mission how he left Myanmar after his parents were killed. He is now living in a refugee camp in Bangladesh, looking after five younger siblings:[2149]

> *I saw smoke rising from my village. Later, when the soldiers had left, I went back to my village with my uncle. At my house we found the burned bodies of my parents. My one-year old sister was also dead, burned, in my mother's lap. I saw many dead bodies in my village. Bodies were both inside the houses and outside. They had been shot, stabbed and burned. I couldn't bear it. I couldn't even take any of my clothes with me, everything was burned.*[2150]

950. The Mission met a large number of children in the Bangladesh refugee camps in September and October 2017 who exhibited visible injuries corresponding with accounts of being shot with live ammunition, stabbed with a sharp implement, or burned. For example, the medical records of a 15-year old girl from Chut Pyin confirmed that she had been shot by live ammunition, consistent with the account she had given of being shot by a soldier. A 12-year old girl from Nga Yant Chaung, Buthidaung Township, showed injuries to her leg which she said occurred when she was shot by soldiers, and her Bangladesh hospital medical records showed that she had spent 30 days in hospital for two gunshot wounds. She was unable to walk when the Mission met her.[2151]

951. Children were also victims of sexual violence. Girls and young women were targeted for rape, mass gang rape, sexual slavery and forced nudity. They were selected by members of the Tatmadaw for sexual violence, including girls of 11 or younger, some as young as seven. The Tatmadaw used schools as military camps during the "clearance operations",[2152] where civilians were subject to sexual violence, beatings and tortured, and in some instances women and girls were raped and mass gang raped. Girls were also abducted from their homes by the Tatmadaw and police in the lead up to the 2017 "clearance operation" and were frequently raped, mass gang raped and killed following their abduction and detention.

Disappearances of men and boys

952. The clearance operations also resulted in the arbitrary arrest and detention, as well as the disappearance, of many Rohingya men and boys, perpetrated by the Tatmadaw, often amounting to enforced disappearances. Their removal was usually violent, with victims

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[2144] EI-075.
[2145] CI-123, CI-137, EI-084, LI-097, LI-114, LI-115, LI-118.
[2146] CI-023.
[2147] CI-148, EI-078, LI-097, LI-119, LI-122.
[2148] EI-078.
[2149] WI-033.
[2150] WI-033.
[2151] EI-040
[2152] EI-077.

beaten and rounded up into groups, with their hands tied together and sometimes blindfolded, before being taken away.[2153]

953. One mother described Tatmadaw soldiers tying up her son and other male villagers, using rope that they had cut from cows. They were then made to lie on the ground.[2154] Another female witness described how male members of her family were rounded up in Maung Gyi Taung village tract, in Buthidaung Township:

> *The military tied their hands behind their back with a rope. There were 25 men tied in line to the same rope, including my 18-year old son and my husband. They were badly beaten and forced to lie down on the ground.*[2155]

954. Another villager described the experience in Nga Yant Chaung, also in Buthidaung Township:

> *They were going into different houses and taking some of the men. They gathered the men and told them to line up. They tied them up together by the hands. While they were tying them up, they hit the men with guns, and kicked them injuring some of them, while continuing to round men up.*[2156]

955. Information suggests that mostly young men were targeted and detained, together with persons considered as respected or influential,[2157] including religious leaders, teachers and village administrators. In most instances, the men were taken away from the village, either on foot or in military trucks or vehicles.

956. This pattern of the targeting and disappearing of men also appears to have continued during the flight to Bangladesh. One woman described how the group she was travelling with encountered Tatmadaw soldiers. She said that some of the men were shot, while others were tied up, taken away and not seen again.[2158] A woman provided information of her two sons being captured in a village in Ah Lel Than Kyaw, Maungdaw Township, where they had sought refuge during their journey to Bangladesh:

> *We were trying to cook some rice under a tree when soldiers came and we all gathered. The soldiers picked out the males, including my two sons. They were forced onto the ground, with their hands tied behind their heads. The soldiers put their boots on the sides of my sons' faces. Thirteen men were then taken away, including my sons.*[2159]

957. The men and boys detained have not been seen since and their whereabouts are unknown.[2160] The circumstances in which men were detained during the "clearance operations" have not afforded family members the opportunity to seek information from the authorities, with many relatives now in Bangladesh. In any event, the Tatmadaw is unlikely to assist them with information. The Tatmadaw publicly referred to the detention of 114 "Bengalis" in October 2017, although no further details were provided regarding their identity or whereabouts, or whether any charges had been laid or judicial process initiated.[2161] Even a conservative estimate of those disappeared far exceeds this figure. Although relatives hope that those taken away are detained, many presume that they have been killed. Some of these fears are based on indications given at the time men and boys were taken away. For example, a woman who saw her son and other men taken away by soldiers was told, "We will do nothing to you, but we will slaughter them".[2162] Another interviewee saw men being tied up and taken into a house, after which he heard the sound

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[2153] EI-030, LI-048, QI-115, WI-007, WI-017, YI-001.

[2154] EI-030.

[2155] YI-001.

[2156] WI-007.

[2157] LI-001, LI-004, QI-051, XI-009, YI-001.

[2158] XI-001.

[2159] EI-030.

[2160] BI-016, XI-006.

[2161] This was stated in the Tatmadaw initial investigation in November, with the same figure reiterated in its more recent publication, "Myanmar Politics and the Tatmadaw: Part 1" (2018).

[2162] EI-030.

of gunfire. He could not see what happened but believes that they were killed.[2163] Similarly, in a well-documented incident, 10 men who had their hands tied and were taken away in Inn Din, southern Maungdaw Township, were subsequently killed by the security forces and local villagers.[2164]

958. The anguish of not knowing what happened to those disappeared remains overwhelming within the Rohingya community. One man made a specific request to the Mission:

> *Please help us find out about the people who were taken away, those who died are gone, but please try to find information about these people.*[2165]

Destruction and looting of civilian homes, property and other protected objects

Burning of property

959. Through analysing satellite imagery and witness accounts, the Mission has established widespread, systematic, deliberate, organized and targeted destruction, mainly by fire, of Rohingya-populated area across the three townships of northern Rakhine State. Maungdaw, Buthidaung and Rathedaung Townships are comprised of approximately 993 villages. Satellite imagery from August 2017 to March 2018[2166] shows that, following 25 August 2017, approximately 392 of these villages[2167] across the three townships were partially (214 villages) or totally (178 villages) destroyed during this period. This represents the destruction of approximately 40 per cent of villages in northern Rakhine State. More than 70 per cent of the destroyed villages, or 277, were located in Maungdaw Township, where the majority of Rohingya population in northern Rakhine State resided. Fire was the main means of destruction.

[2163] QI-115.

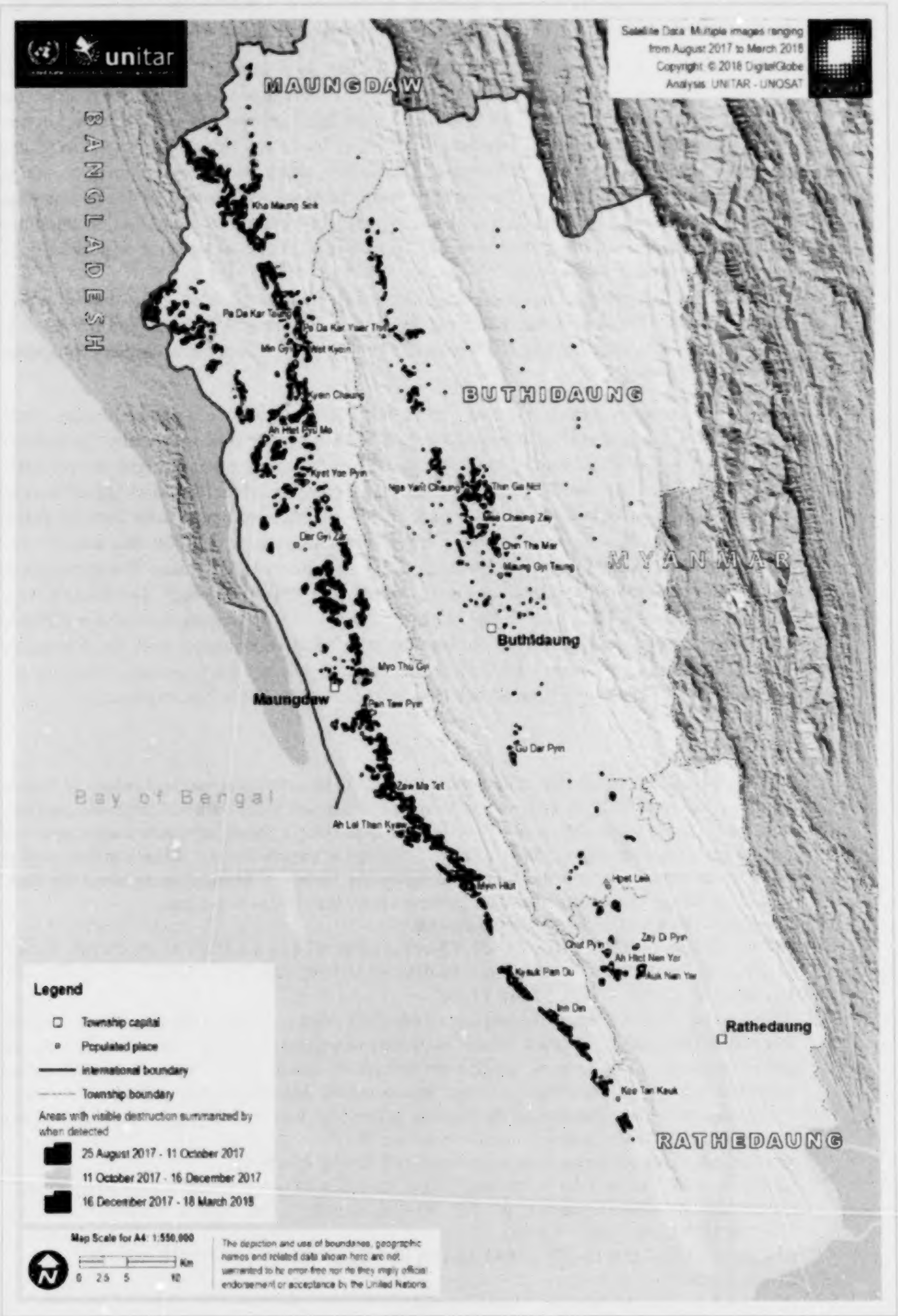
[2164] CI-146, LI-006, LI-130, QI-051; See this chapter, section D.1.a. Most serious incidents; Wa Lone, Kyaw Soe Oo, S. Lewis, A. Slodkowski, "Massacre in Myanmar" (Reuters, 8 February 2018). Commander-in-Chief, "Tatmadaw investigation team statement on findings of discovery of unidentified bodies in Inn Din Village Cemetery in Maungdaw Township" (Facebook post, 10 January 2018), post on file with Mission.

[2165] RI-001.

[2166] This is the period covered by the UNITAR-UNOSAT data analysis provided to the Mission, a summary of which is accessible at http://cern.ch/unosatsdn/ohchr/myanmar/UNOSAT_report_Myanmar_20180907.pdf

[2167] 277 villages in Maungdaw, 96 villages in Buthidaung, and 19 villages in Rathedaung.

Map showing areas with visible destruction, through burning, of houses, other structures and vegetation in northern Rakhine State. The map was developed through the analysis of high-resolution satellite imagery collected on multiple dates between 25 August 2017 and 18 March 2018. Destruction is represented by coloured dots, with colours corresponding to the date range when visible destruction was detected. Due to cloud cover and satellite overpass range, damage is detected within a date range. The date range refers to damage detection, as opposed to when it occurred.


unitar
MAUNGDAW
BANGLADESH
Kha Maung Seik
Pa Da Kar Taung
Pa Da Kar Ywar Thit
Min Gyi
Nat Kyoin
Kyein Chaung
Ah Htet Pyu Ma
Kyet Yoe Pyin
Dar Gyi Zar
BUTHIDAUNG
Nga Yant Chaung
Thin Ga Net
Chaung Zay
Chin Tha Mar
Maung Gyi Taung
MYANMAR
Buthidaung
Myo Thu Gyi
Maungdaw
Pan Taw Pyin
Gu Dar Pyin
Zaw Ma Tet
Bay of Bengal
Ah Lel Than Kyaw
Myin Hlut
Hpet Leik
Zay Di Pyin
Chut Pyin
Ah Htet Nan Yar
Auk Nan Yar
Kyauk Pan Du
Inn Din
Rathedaung
Koe Tan Kauk
RATHEDAUNG
Legend
Township capital
Populated place
International boundary
Township boundary
Areas with visible destruction summarized by when detected
25 August 2017 - 11 October 2017
11 October 2017 - 16 December 2017
16 December 2017 - 18 March 2018
Map Scale for A4: 1:550,000
0 2.5 5 10 Km

Satellite Data: Multiple images ranging from August 2017 to March 2018
Copyright: © 2018 DigitalGlobe
Analysis: UNITAR - UNOSAT

The depiction and use of boundaries, geographic names and related data shown here are not warranted to be error-free nor do they imply official endorsement or acceptance by the United Nations.

960. Within these affected villages, approximately 37,700 individual structures were destroyed.[2168] The vast majority were Rohingya homes, but the Mission has established that other buildings, including markets,[2169] religious schools (madrassas) and mosques, [2170] were also destroyed. The majority of the detected damage, approximately 80 per cent, was already visible in satellite imagery as of 16 September 2017. By that date, approximately 30,800 structures had already been destroyed in 279 villages.[2171] As such, the majority of the destruction occurred in the first three weeks of the "clearance operations", consistent with the timing of the most serious incidents in this report. However, the burning of houses and structures continued over an extended period, until at least March 2018.[2172]

961. Villages were burned by Tatmadaw soldiers and ethnic Rakhine. Much of this burning was done manually, through the use of flammable liquids thrown onto the buildings and set alight using matches and through lighting buildings with flaming torches. Tatmadaw soldiers also used weapons referred to by many victims as "launchers" and described as making loud explosive sounds, after which a whole building, or set of buildings, rapidly caught fire. "Launcher" likely refers to a weapon that fires a munition that explodes upon impact. Victims generally described a hand-held or shoulder-mounted weapon, but some also described weapons fixed to the ground using some sort of support. Victims were most likely describing a portable anti-armour weapon such as an RPG-7 (rocket propelled grenade launcher) or the M-3 Carl Gustav recoilless rifle, both of which are used by the Tatmadaw and match the description in terms of both use and results. It is likely that both rocket launchers and mortars were used by Tatmadaw soldiers to destroy buildings and homes.

962. The accounts collected further demonstrate the systematic and planned nature of the burning of villages. Burning followed a regular pattern. Interviewees describe "launchers" being fired by soldiers directly into Rohingya-inhabited areas, often at night or very early morning, and setting one or more structures on fire. The ethnic Rakhine played a role, burning Rohingya homes manually, house to house, often equipped with cans of petrol among other equipment.[2173] In some villages, other minorities fulfilled this role.[2174] For example, in Mee Chaung Zay, Buthidaung Township, interviewees stated that members of the Hindu minority and Tatmadaw soldiers burnt their village together. The Hindus were recognised from barber shops in the nearby Bazar.[2175] The participation of ethnic Rakhine and other ethnic communities in the burning was often coordinated with the Tatmadaw operations. In many locations, ethnic Rakhine methodically set fire to houses, alongside the soldiers.[2176] One Rohingya from Kyauk Pan Du, Maungdaw Township, explained:

[2168] UNOSAT estimated the number of destroyed structures in the affected townships between 25 August 2017 and 18 March 2018 by carrying out a damage assessment using statistical predictive analytics based on a simple linear regression. This involved identifying a sample of representative areas and performing a structure count in these areas. This created a "sample dataset" which was then used to estimate the number of structures destroyed within the identified damaged areas across the three townships. UNOSAT estimate a margin of error in counting as low as 10 per cent.

[2169] BI-002, CI-189, CI-192, CI-194, QI-106, RI-008.

[2170] BI-002, CI-009, CI-028, CI-042, CI-102, CI-103, CI-108, CI-114, CI-129, CI-135, CI-189, EI-017, EI-066, LI-076, QI-001, QI-070, RI-015, RI-016, WI-005, WI-006, WI-009, WI-012, WI-013, WI-014, WI-017, YI-001, YI-013, YI-019 YI-030.

[2171] According to UNOSAT, due to the presence of extensive cloud cover in the imagery collected during this period, the damage analysed is very likely underestimated. UNOSAT subsequently collected additional images of those areas, which were covered by clouds on 16 September and identified additional damage in 10 villages affecting approximately additional 1,700 individual structures. Given the pattern of the damage and the presence of fire detections on those areas, it is likely that this destruction might have occurred before 16 September 2017.

[2172] Satellite image analysis prepared for the mission by UNITAR-UNOSAT.

[2173] CI-036, CI-120, CI-124, CI-125, LI-066, LI-069, LI-102, LI-118, LI-120, LI-129, LI-132, QI-002, QI-005, QI-115, WI-007, WI-014, WI-032, WI-016, XI-002, XI-003, XI-005, YI-006, YI-013, YI-014, YI-015, YI-018, YI-021, YI-030.

[2174] CI-125, CI-135, CI-148, EI-057, LI-044, LI-119, QI-012, QI-022, QI-035, QI-109, WI-044.

[2175] CI-135, LI-044.

[2176] CI-124, LI-066, LI-119, WI-016, YI-006, YI-014.

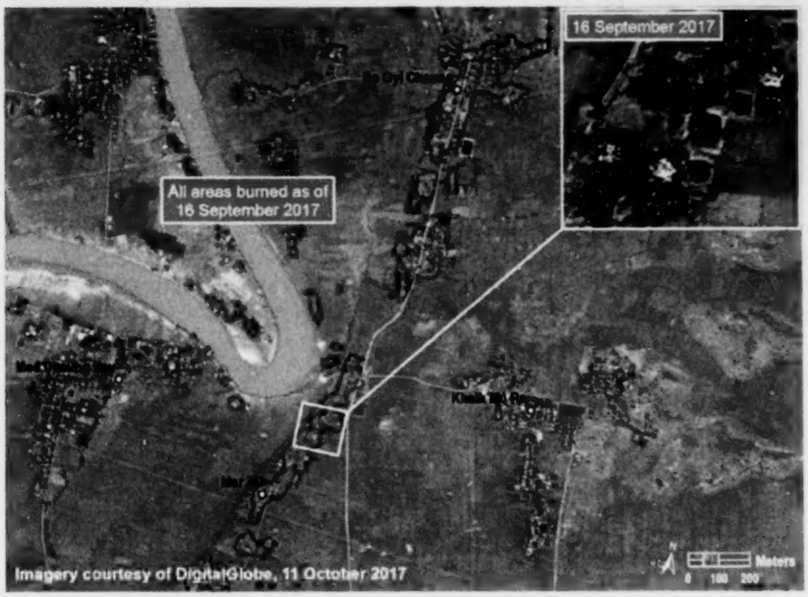
> *They threw bottles full of liquid onto the houses, and then they would throw a match. They also used large canisters containing between 10 to 20 litres of liquid. The military were using launchers, and they were directing the Rakhine to target the smaller houses and those that had been left unburned after the launcher had been used.*[2177]

963. Although significant burning took place at and around the sites where ARSA carried out their attacks, the overall area affected was far greater, encompassing villages located significant distances away from these attacks.[2178]

964. A number of villages close to the location of ARSA attacks experienced "clearance operations" and burning in the immediate aftermath, within hours of the attacks on 25 August 2017. Three examples are given below. Verified accounts confirm that in each area the burning of villages commenced on 25 August and then continued for some days afterwards. Satellite imagery analysis taken from 16 September 2017, when the absence of cloud cover allowed for detailed imagery, shows the extent of the destruction in each location.

965. Mee Chaung Zay village tract in Buthidaung Township was near the location of three ARSA attacks.[2179] Interviewees from Ywar Thit, Mar Zi and Hpaw Tay Ahr Li villages reported hearing the sound of nearby gunfire in the early morning of 25 August and seeing soldiers entering their villages soon afterwards. The soldiers shot at people and burned homes with the use of "launchers". Burnings took place over a series of days while people sought shelter in the nearby forested hills.[2180] The mosque was also burned.[2181]

Image of Mee Chaung Zay from 11 October 2017. Burnings first detected on 16 September 2017


16 September 2017
All areas burned as of 16 September 2017
Imagery courtesy of DigitalGlobe, 11 October 2017
N
Meters
0 100 200

[2177] WI-016.

[2178] Satellite image analysis prepared for the mission by UNITAR-UNOSAT.

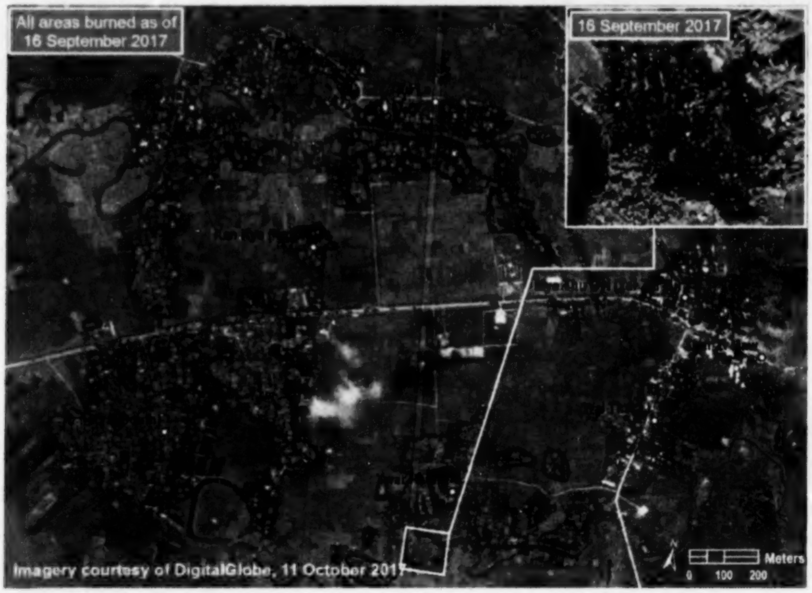
[2179] In the early hours of 25 August 2017, ARSA conducted an attack at the BGP outpost in Hpaung Taw Pyin, at the military base occupied by the Light Infantry Battalion 552, and another shortly afterwards at the BGP outpost in Nga Yant Chaung.

[2180] CI-112, CI-135, QI -024, XI-005.

[2181] CI-195, YI-030; K-164

966. Villagers from Myo Thu Gyi village tract, Maungdaw Township, described soldiers, accompanied by ethnic Rakhine, burning houses on the morning of 25 August 2017 and the following days.[2182] They burned several hamlets in the surrounding area. Despite not being mentioned in official Government accounts as the location for an ARSA attack on 25 August, there is official reference to ARSA carrying out an ambush on vehicles of the security forces in Myo Thu Gyi on 26 August 2017, which resulted in an exchange of fire.[2183]

Image of Myo Thu Gyi from 11 October 2017. Burnings first detected on 16 September 2017



Imagery courtesy of DigitalGlobe, 11 October 2017

967. Ywar Thit Kay, Ward Five in Maungdaw town, was also the location of an ARSA attack.[2184] One interviewee described how on 25 August, at around 3am, she heard gunshots and a loud explosion, and joined others fleeing to a nearby village. When she returned to her house two days later, she saw military and ethnic Rakhine setting houses on fire.[2185]

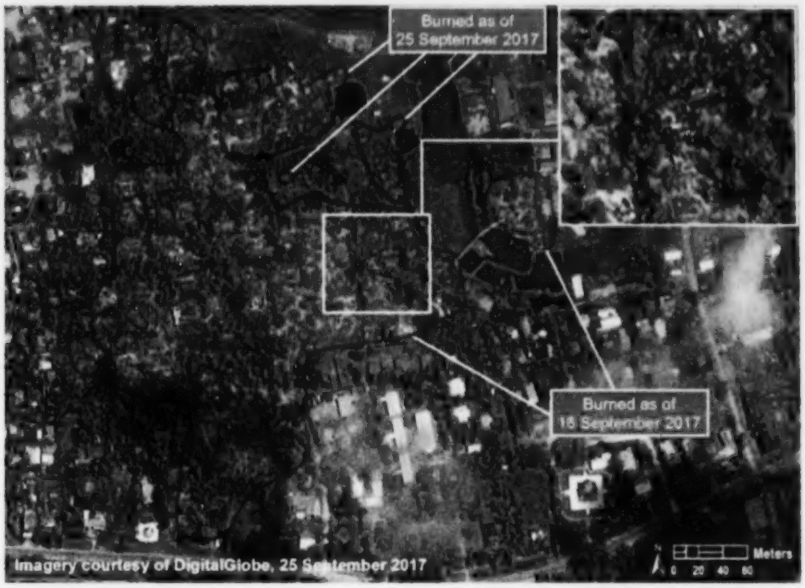
[2182] QI-035, QI-108, WI-011.

[2183] Information Committee, "Breaking News 6", (Facebook post, 28 August 2017),https://www.facebook.com/InfomationCommittee/posts/786693624837079

[2184] Information Committee, "Breaking News 2", (Facebook post, 25 August 2017), https://www.facebook.com/InfomationCommittee/posts/785202504986191; K-154.2

[2185] YI-021.

Image of Ywar Thit Kay from 25 September 2017. Burnings first detected on 16 September 2017



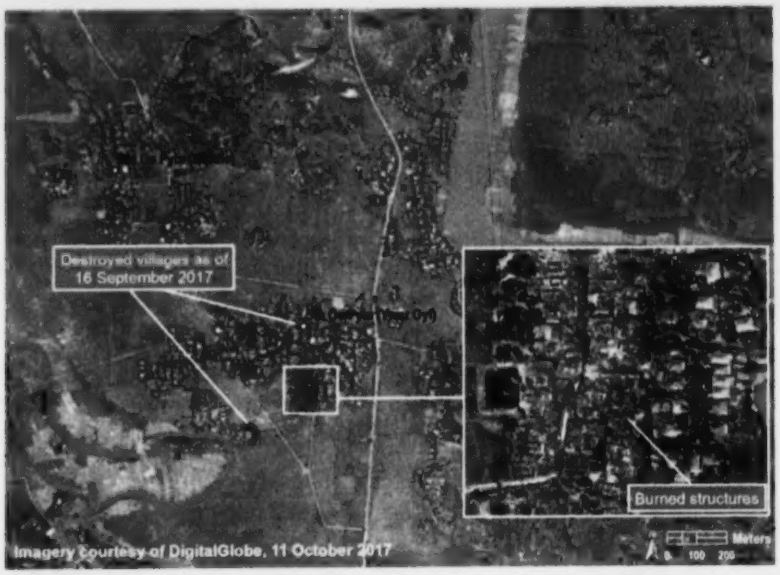
Imagery courtesy of DigitalGlobe, 25 September 2017

968. The "clearance operations" were also initiated in the days after the ARSA attacks in numerous other locations across northern Rakhine State that were not in the vicinity of an ARSA attack. One example is the village of Sin Oe Pyin, in Maung Gyi Haunt village tract, Buthidaung Township. On or around 26 August 2017, the village was set on fire by Tatmadaw soldiers. Neither the Government nor any other source reported any ARSA attack in the vicinity. Several interviewees said that soldiers entered the village, started shooting at villagers and used "launchers" to burn houses:[2186] "The soldiers were everywhere; the whole village seemed full of soldiers. They were shooting towards the people randomly and shooting launchers to burn the houses."[2187] These accounts are consist with satellite imagery analysed by the Mission showing that Sin Oe Pyin was burned by 16 September 2017.

[2186] CI-132, LI-047, LI-114, XI-004.

[2187] LI-114.

Image of Sin Oe Pyin from 11 October 2017. Burnings first detected on 16 September 2017


Destroyed villages as of 16 September 2017
Burned structures
Meters
0 100 200
Imagery Courtesy of DigitalGlobe, 11 October 2017

969. The security forces and ethnic Rakhine often returned to "clear" and systematically burn villages.[2188] Satellite imagery confirms that, despite the State Counsellor's statement of 19 September 2017 that the military's "clearance operations" ended on 5 September,[2189] the destruction of villages continued for weeks afterwards. One example is Goke Pi village in Buthidaung Township, which was intact as of 25 September and subsequently burned by 11 October.[2190]

[2188] CI-043, QI-008, QI-010, QI-011, QI-017, QI-025, QI-061, QI-062, QI-107.

[2189] "Speech delivered by Her Excellency Daw Aung San Suu Kyi, State Counsellor of the Republic of the Union of Myanmar on Government's efforts with regard to National Reconciliation and Peace" (Facebook post, 19 September 2017), https://www.facebook.com/state.counsellor/posts/speech-delivered-by-her-excellency-daw-aung-san-suu-kyi-state-counsellor-of-the-/1121130291354519.

[2190] For example, although not the site of any ARSA attacks, Aw Lan Pyin village in Nga Kyin Tauk village tract (Buthidaung); Mee Chaung Khaung Swea (Buthidaung); Tin May (Buthidaung); Goke Pi (Buthidaung) were all burned after 5 September 2017.

Image of Goke Pi from 25 September 2017. All structures remain intact

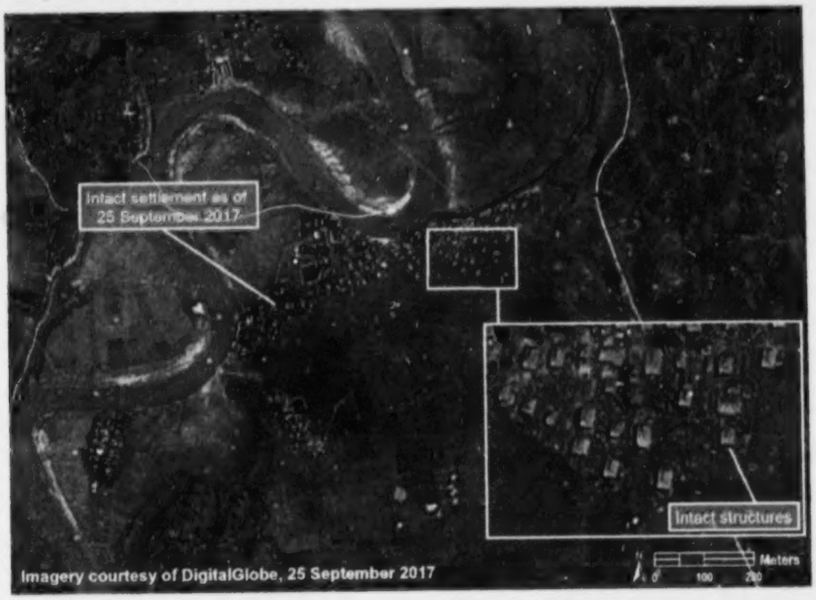
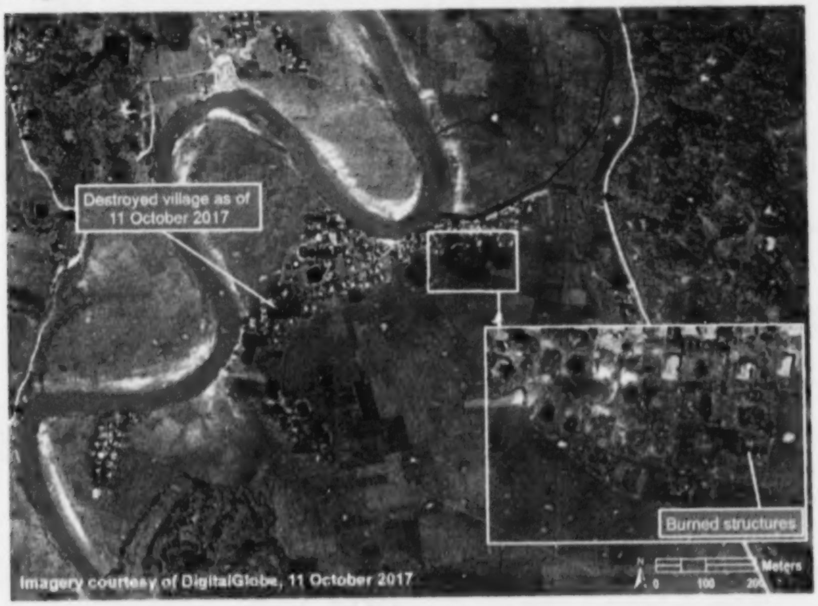

Intact settlement as of 25 September 2017
Intact structures
Imagery courtesy of DigitalGlobe, 25 September 2017
N
0 100 200 Meters

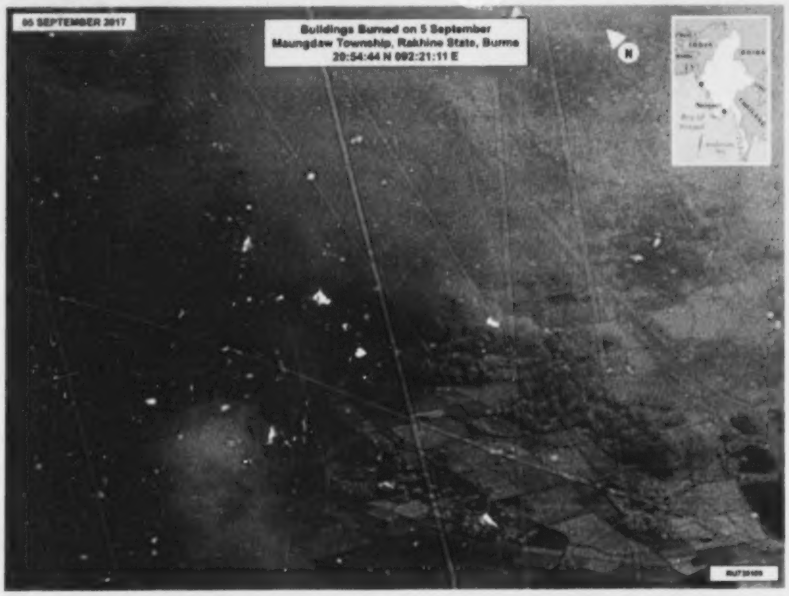
Image of Goke Pi from 11 October 2017. A large number of structures are burned

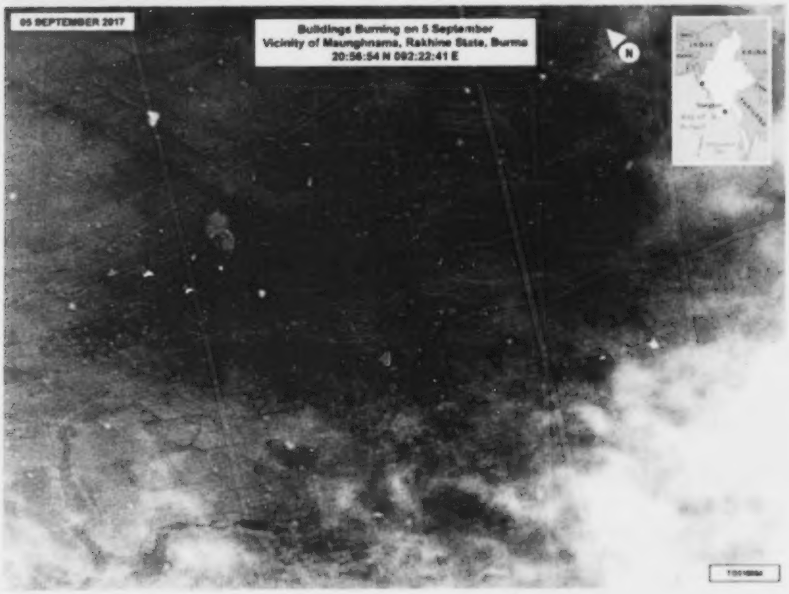

Destroyed village as of 11 October 2017
Burned structures
Imagery courtesy of DigitalGlobe, 11 October 2017
N
0 100 200 Meters

970. While in southern Bangladesh, the Mission witnessed large plumes of smoke from near the border in neighbouring Myanmar, which indicated the presence of large fires: on 15 September, in northern Maungdaw or north-western Buthidaung; and on 17 September in central Maungdaw, most probably in Kyauk Hlay Kar or Zin Paing Nyar village tracts in central Maungdaw.[2191]

[2191] Photographs taken by Mission staff member on 15 September 2017 at 1.15pm from 21°12'36.9"N 92°09'40.0"E is of burning in northern Maungdaw, or the north-western Buthidaung. Photographs

971. Imagery further demonstrates that the destruction deliberately targeted Rohingya villages and property. It shows that in some locations only clusters of structures appear to be burned, while the surrounding vegetation remains untouched, suggesting that fires were lit seperately and that burning deliberately targeted specific structures.[2192] The images below, from 5 September 2017, show Hla Poe Kaung and Maung Hna Ma villages in Maungdaw Township, with numerous visible fires.[2193] These fires appear to be distinct and separate, rather than fire spreading from one area to another.


05 SEPTEMBER 2017
Buildings Burned on 5 September
Maungdaw Township, Rakhine State, Burma
20:54:44 N 092:21:11 E
N


05 SEPTEMBER 2017
Buildings Burning on 5 September
Vicinity of Maunghnama, Rakhine State, Burma
20:56:54 N 092:22:41 E
N

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taken by Mission staff member on 17 September 2017 at 3.34pm from 20°53'29.0"N 92°17'44.0"E is likely to be of burning in Kyauk Hlay Kar or Zin Paing Nyar village tracts in central Maungdaw. (On file with FFM)

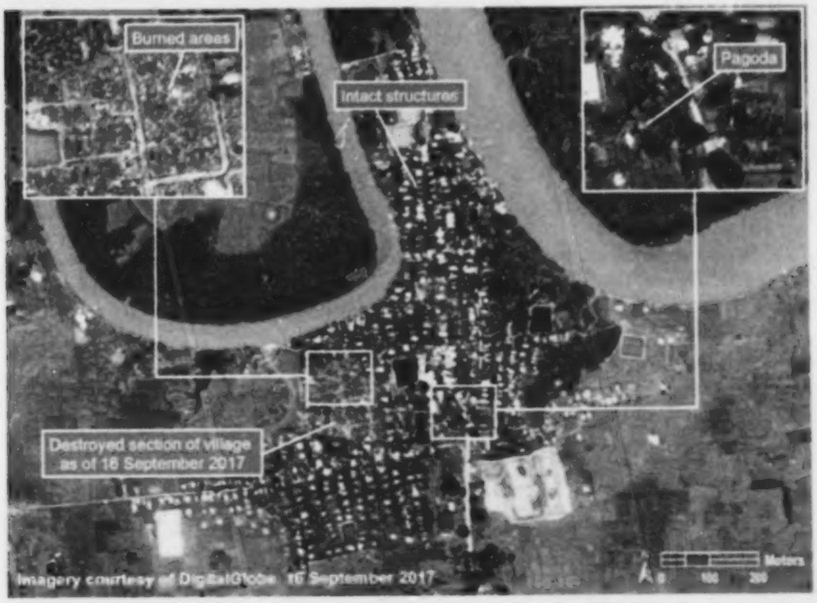
[2192] V-067.

[2193] US National Imaging Systems.

972. The targeted nature of the burning is further demonstrated by the fact that, in at least 22 locations analysed, only specific Rohingya settlements were affected, while other non-Rohingya settlements within the same village tracts remained untouched.[2194] The untouched settlements are often more organized in layout, with evenly distributed structures in rows, and appear to be constructed from higher quality materials, including corrugated iron roofs. Buddhist pagodas are also often visible within, or close to, these settlements. The burned settlements are generally less organized in layout, giving the appearance of having grown organically over time, and usually with less robust structures, with thatched roofs. These factors indicate that the intact areas are non-Rohingya, usually ethnic Rakhine, and the burned areas are Rohingya.

973. Similarly, where the Mission could establish that the "clearance operations" were carried out in mixed ethnicity villages, satellite imagery shows that only the areas populated by the Rohingya were targeted. Accounts provided to the Mission further corroborate this analysis.[2195] For example, the image below shows one area of Zay Di Pyin, a mixed-ethnicity village in Rathedaung Township, with an ethnic Rakhine majority population, damaged by fire. According to accounts provided to the Mission, the area burned was populated by Rohingya.

Image of Zay di Pyin taken on 16 September 2017



Imagery courtesy of DigitalGlobe. 16 September 2017

974. Many settlements that remained intact in mixed villages are "model villages", also known as "NaTaLa". For example, in Inn Din, southern Maungdaw Township, there are six Rohingya hamlets and two small ethnic Rakhine hamlets, one of which is a NaTaLa village. Satellite imagery analysis demonstrates that most Inn Din villages have been completely burned during the "clearance operations", while the NaTaLa village, Pae Youne, is

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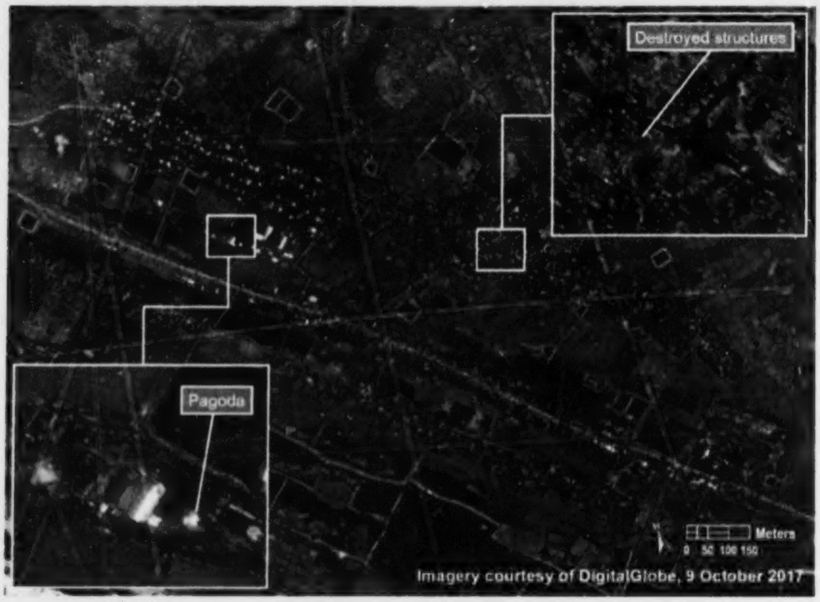
[2194] Kha Maung Seik (Maungdaw); Kyee Kan Pyin (Maungdaw); Laung Don (Sin Thay Pyin village, Maungdaw); Koe Tan Kauk (Rathedaung); Myo Thu Gyi (Maungdaw); Inn Din (Maungdaw); Nyaung Chaung (Maungdaw); (Du) Chee Yar Tan (Maungdaw); Ywar Thit Kay (Gaw Du Thar Ra village, Maungdaw); War Cha (Maungdaw); Chut Pyin (Rathedaung); Tha Man Thar (Maungdaw); Min Gyi (Maungdaw); Kyauk Pyin Seik (Maungdaw); Tha Yae Kone Tan (Maungdaw); Zaw Ma Tet (Maungdaw); Kyauk Pan Du (Maungdaw); Myauk Ye (A) Pan Be Chaung (Buthidaung); Zee Hton (Buthidaung); Zay Di Pyin (Rathedaung)

[2195] CI-007, LI-006, LI-042, LI-100, LI-101, LI-118, LI-142.

unaffected. The Mission collected numerous accounts of the targeted burning of Rohingya settlements in Inn Din by Tatmadaw soldiers and ethnic Rakhine.

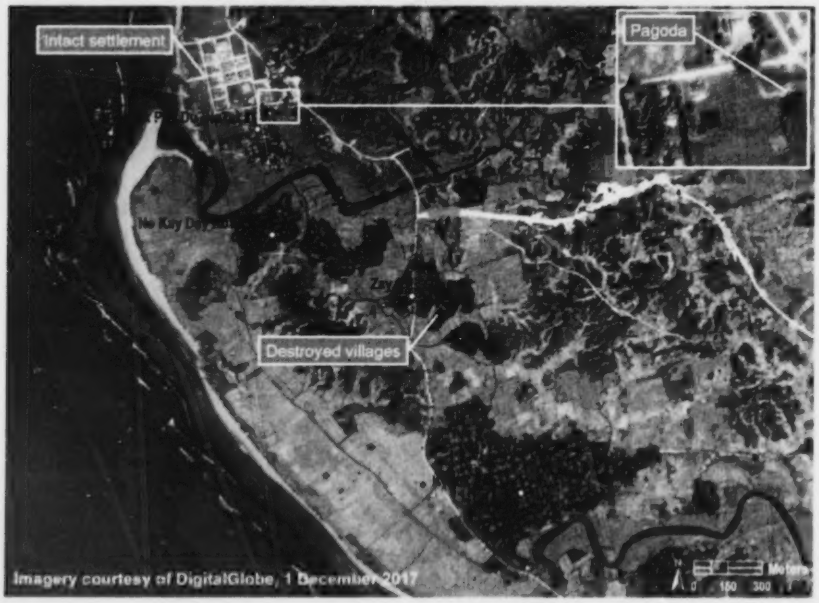
Image of Inn Din taken on 9 October 2017 showing burned structures and Pae Youne NaTaLa village, to the west, intact (with pagoda shown in inset)


Destroyed structures
Pagoda
Meters
0 50 100 150

Imagery courtesy of DigitalGlobe, 9 October 2017

975. Similarly, satellite imagery analysis shows most of Kyauk Pan Du village tract, southern Maungdaw Township, burned, while the NaTaLa village, characterised by a more structured distribution of houses and a pagoda, remains untouched.

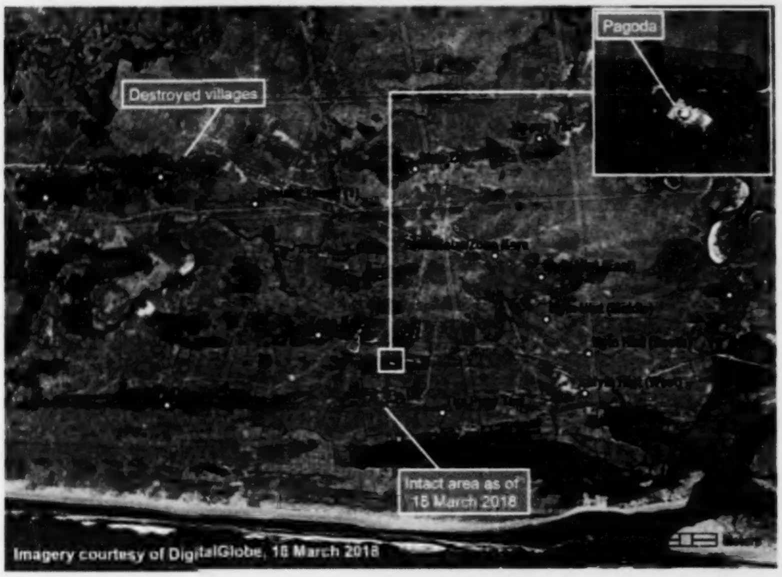
Image of Kyauk Pan Du taken on 1 December 2017


Intact settlement
Pagoda
Zay
Destroyed villages
Meters
0 150 300

Imagery courtesy of DigitalGlobe, 1 December 2017

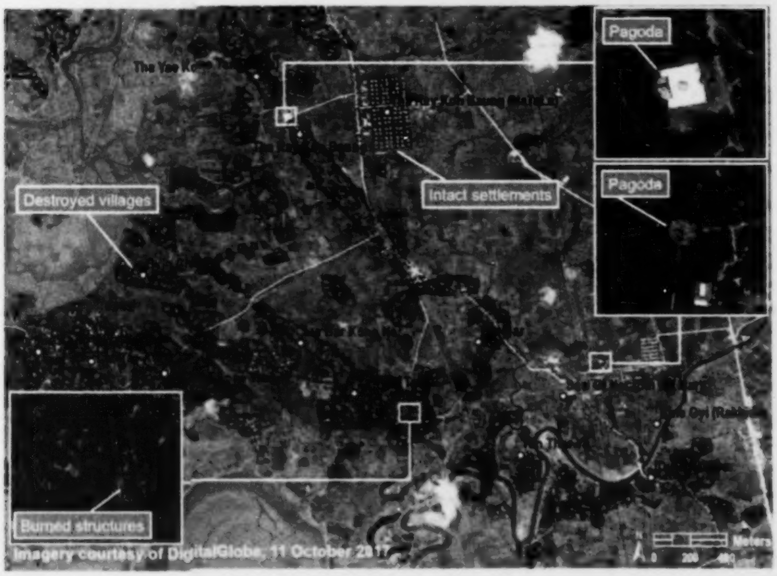
976. Targeted destruction is also visible in satellite imagery analysis of Tha Pyay Taw village tract, southern Maungdaw Township. A small residential area, with a pagoda in the centre, remains intact, while the surrounding three villages, Tha Pyay Taw, Zone Kar Yar and Thar Yar Taw, are totally destroyed, as is Myin Hlut village tract to the southeast. Similarly, the majority of settlements in Tha Yae Kone Tan village tract in southern Maungdaw Township were destroyed, while Tha Ray Kon Baung, the nearby NaTaLa village, remains untouched, as does Saw Gi Nar. Pagodas unaffected by fire can be seen in each area. A more recent image of Tha Yae Kone Tan village tract shows new road improvements connecting the pagoda to Tha Ray Kon Baung.

Image of Tha Pyay Taw taken on 18 March 2018


Pagoda
Destroyed villages
Intact area as of 18 March 2018

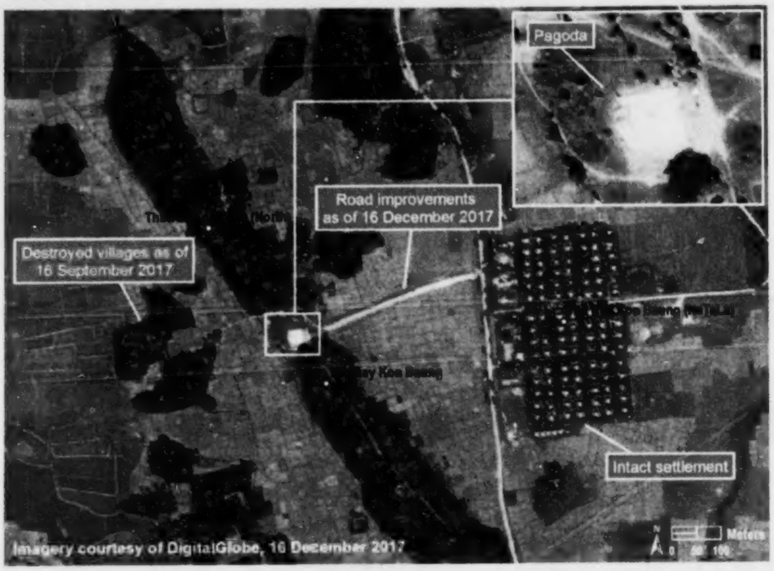
Imagery courtesy of DigitalGlobe, 18 March 2018

Image of Tha Yae Kone Tan taken on 11 October 2017


Pagoda
Pagoda
Destroyed villages
Intact settlements
Burned structures
Meters
0
200
400

Imagery courtesy of DigitalGlobe, 11 October 2017

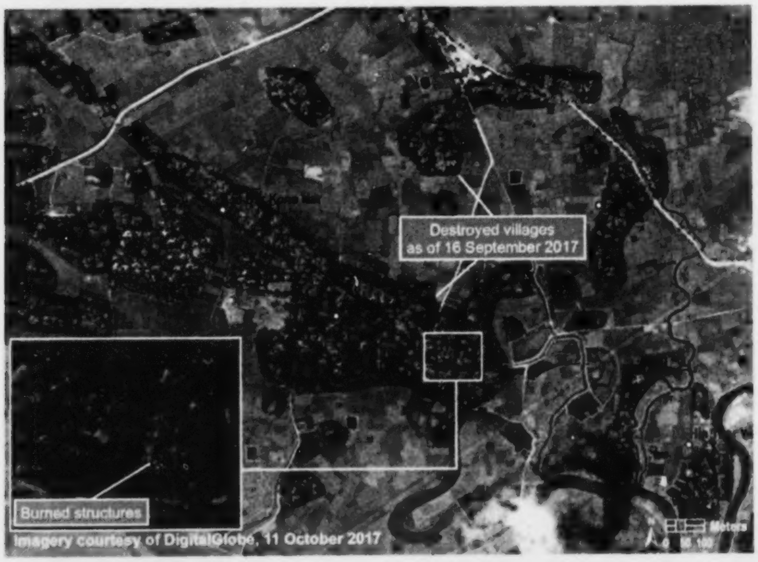
Image of Tha Yae Kone Tan taken on 16 December 2017


Pagoda
Road improvements as of 16 December 2017
Destroyed villages as of 16 September 2017
Intact settlement
N
Meters
0 50 100

Imagery courtesy of DigitalGlobe, 16 December 2017

977. The Mission also received information of soldiers or local authorities demanding large bribes from the Rohingya villagers to spare their villages from burning.[2196] One example was Zaw Ma Tet village in central Maungdaw Township where one interviewee claimed that, after the Tatmadaw burned the local market place on 27 August, they requested 60 million Kyat or the village would be attacked. The interviewee stated that they were unable to pay such a large sum and so they fled to Bangladesh. Satellite imagery analysis shows that the village was subsequently burned.[2197]

Image of Zaw Ma Tet taken on 11 October 2017


Destroyed villages as of 16 September 2017
Burned structures
N
Meters
0 50 100

Imagery courtesy of DigitalGlobe, 11 October 2017

[2196] QI-040, QI-041, QI-106.

[2197] QI-106.

Looting

978. The "clearance operations" also encompassed the looting of goods, in which civilians played a central role. For the most part, looting was carried out by security forces together with ethnic Rakhine, often recognisable to their Rohingya neighbours.[2198] Other minority groups also looted and were recognizable by their distinctive dress or appearance.[2199] Looting often took place at the outset of a "clearance operation", with participants arriving together with the security forces, and systematically looting Rohingya goods and other possessions from houses prior to the burning of the village.

979. Looting was comprehensive. Often, all moveable property was stolen, including gold and other valuables, food stocks, motorcycles, cattle, goats and other livestock.[2200] The stolen property was then set aside so that it would not be destroyed once the burning started.[2201] One Rohingya witness described seeing ethnic Rakhine "taking everything"[2202] from his village, while another explained how the ethnic Rakhine put looted property in sacks which were put outside before they set structures on fire.[2203] A man described the scene in his village in southern Maungdaw:

> *I had fled my house and was with my family crouching and hiding in the bushes near the river. From there I could see the ethnic Rakhine looting the houses. They were piling up all the valuable things outside the houses before burning the houses. They were piling things on the main road. Some things were in sacks and some were on the road.*[2204]

980. Sometimes goods were put directly into military vehicles, including large military trucks, before houses were set on fire.[2205] One Rohingya villager described seeing military vehicles being loaded up and driven away and then the ethnic Rakhine leaving with all that they could carry.[2206] Another villager described how looted goods were taken to temporary military camps.[2207]

981. Looting continued in the days following a "clearance operation", with ethnic Rakhine often returning to the cleared villages to continue looting and round up abandoned Rohingya cattle.[2208]

982. The mass looting resulted not only in widespread theft of Rohingya goods, but also contributed to the forced deportation of the Rohingya population, through forced destitution and, in the case of livestock and other property, loss of their source of livelihood.

983. Many women and girls, including survivors and victims of sexual violence were also systematically robbed during body searches and assaults, and frequently told of their sense of loss for their home and possessions.[2209] Gold jewellery is an important status symbol, and its loss has a deep psychological impact.[2210] Many victims of rape also lamented the loss of their new clothes, bought for the Eid festival just before the "clearance operations" began.[2211]

[2198] CI-029, CI-036, CI-120, CI-124, CI-138, LI-066, LI-069, LI-081, LI-100, LI-102, LI-109, LI-119, LI-120, LI-131, LI-132, QI-005, QI-013, QI-027, WI-004, WI-032, YI-006, YI-009, YI-014, YI-015, YI-018, YI-021, YI-031.

[2199] CI-124, LI-076, LI-109, LI-112, LI-119.

[2200] CI-138, LI-037.

[2201] LI-112, LI-120, LI-132.

[2202] LI-100.

[2203] LI-132.

[2204] LI-120.

[2205] CI-034, CI-138, LI-037, QI-013.

[2206] CI-034.

[2207] WI-032.

[2208] QI-113, XI-005.

[2209] EI-034, EI-069, EI-096, EI-099.

[2210] K-122.

[2211] EI-086.

The arduous journey: more deaths and hardship

984. The "clearance operations" forced hundreds of thousands of Rohingya to flee and walk for days, or even weeks, through forests and over mountains, to reach Bangladesh. On this journey, many more died or were killed or injured. There was minimum shelter, with people having to sleep in the open, and little food or water.

985. Tatmadaw soldiers shot at groups of Rohingya who were *en route*.[2212] At times, these attacks occurred in villages that were already burned, where fleeing Rohingya were seeking refuge on their journey.[2213] At other times, attacks took place in forested areas or when Rohingya were forced into the open, for example when crossing rivers.[2214] One woman from Chin Tha Mar village tract, Buthidaung Township, described how, after walking for two days, she and her group were near a river crossing when soldiers opened fire at people as they were crossing. She saw two people shot.[2215] Another man recounted how he and his family were awaiting a boat to carry them across a river. A group of soldiers and police opened fire at a boat carrying people across, killing four of the passengers.[2216]

986. Many dead bodies sighted on the journey exhibited bullet or stab wounds. There appear to have been violent attacks at passes in the mountain ranges, most notably in the "Fati Yaar Dala" range, separating the north of Buthidaung from northern Maungdaw Township. Although the Mission was not able to verify the circumstances of these killings, it received accounts of many Rohingya corpses indicating death from violent injuries. This included persons with slit throats and others with bullet wounds.[2217] Witnesses spoke of there being piles of bodies and a row of severed heads.[2218] As one man recounted:

> *There were a lot of bodies in the hill near to Fati Yaar. I think there were more than 50 bodies. We saw them in a place where there were many bags of abandoned rice and other possessions. People appeared to have been gathering there when they were killed.*[2219]

987. Other villagers saw numerous bodies in another nearby mountain pass, the "Lobboi Dala", which was near Pa Da Kar Day War Nar Li/Net Chaung village tract in Maungdaw Township.[2220] One man described his journey through these mountains:

> *I crossed Fati Yaar Dala. There I saw dead bodies, including women, and some severed heads. I also saw one man strangled with a vine. Then I left the Fati Yaar Dala and crossed the Lobboi Dala, which is a smaller mountain range nearby. There I saw many more dead bodies. I could see that people had been slaughtered with knives; very few had bullet injuries. You can see so many dead bodies there.*[2221]

988. Data from *Médecins Sans Frontiers* indicates the scale of violent deaths *en route* to Bangladesh, noting that 13.4 per cent of violent deaths occurred during the period between displacement from their village and arrival in Bangladesh.[2222]

989. The appalling conditions of the journey also contributed to the high number of casualties. Hundreds of thousands of Rohingya fled with little or no notice and few, if any, possessions. Many had sustained injuries and needed urgent medical care. Most would have been experiencing deep psychological trauma, leaving their homes following a violent assault during which many had witnessed the deaths of family members and neighbours, as well as the destruction of their homes and villages. Continuing "clearance operations" and

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[2212] CI-001, LI-057, LI-119, WI-007, XI-001, YI-031.

[2213] QI-003.

[2214] CI-001, CI-050, EI-027, EI-034, LI-003, WI-007, XI-001.

[2215] EI-027.

[2216] CI-050.

[2217] CI-135, LI-049, LI-114, LI-051, QI-024, YI-030, YI-031.

[2218] LI-049, LI-051, LI-059.

[2219] QI-024.

[2220] CI-010, YI-030, YI-031.

[2221] YI-030.

[2222] Médecins Sans Frontiers, "Retrospective mortality, nutrition and measles vaccination coverage survey in Balukhali 2 & Tasnimarkhola camps" (Bangladesh, 2017).

the presence of large numbers of Tatmadaw soldiers and other security forces made it dangerous to travel on main roads or to seek shelter or provisions in other villages. Instead, Rohingya villagers walked for days or weeks in forest and mountain areas, sleeping in makeshift shelters or in the open, during heavy monsoon rains, and without sufficient food or water. This disproportionately affected the most vulnerable, including children and the elderly. Many persons died and were buried in makeshift graves. A woman described her journey, with experiences that were typical of many:

> *It took nine days to reach Bangladesh. On the way, I saw four or five decapitated heads by the side of the path. One of our group died on the journey, a small boy. One woman gave birth. I had a packet of biscuits with me, but nothing else. It was raining heavily. Everything was burning around us.*[2223]

990. One woman, who had seen her husband and son killed in Kha Maung Seik, Maungdaw Township, spent three nights in a forest before arriving in Bangladesh. She recalled how hungry her children were during this period, and how she had to feed them with plant leaves.[2224] Another man, from Buthidaung town, described walking for 16 days through the forests to Bangladesh using a small pot to cook leaves to eat, while drinking water from streams. Three people with him died on the journey, including his aunt.[2225]

991. Villagers carried injured relatives or neighbours on the journey.[2226] Others were left behind, unable to be carried, with people forced to make difficult decisions.[2227] A survivor from Min Gyi, Maungdaw Township, recalled how she and her sister-in-law had to leave behind another woman:

> *It was very muddy and difficult due to the heavy rain. The other woman was injured, with stab wounds on her neck, and it was very difficult for her to walk. We were all slipping in the mud, and we realised that we could not drag her along with us anymore. We could hear the military and ethnic Rakhine talking nearby at a well, and we knew that, if we kept on waiting for the other woman, we would all be killed. We tried again to move her but we couldn't, and so we decided that we had no choice but to leave her there. My sister-in-law dragged me away and said, "don't look back, there's no point".*[2228]

992. People succumbed to their injuries, including because of lack of access to medical treatment. Mothers gave birth to babies en route,[2229] some of whom may have died or suffered extreme malnutrition.[2230] Deaths occurred on the beaches of the Bay of Bengal, as people waited for days for a boat to take them to Bangladesh. One man described seeing babies born on the beach and helping to bury more than 10 people who died there, including children and the elderly: "It was very hot and there was not enough food or water.[2231]

993. A large number of Rohingya also drowned while trying to flee to safety across rivers or at sea. Most bodies of water in northern Rakhine were swollen to high levels from the August and September monsoonal rains, and the risks were amplified by dangerous tides. Children, women and the elderly, less able to swim, were particularly vulnerable.[2232] As one man fleeing his village in Zay Di Pyin, Rathedaung Township, recalled, many people attempted to cross a narrow river beside his house. The height of tides forced people to swim rather than wade across. Two sisters, 10 and 12 years old, could not swim and

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[2223] QI-062.

[2224] EI-049.

[2225] QI-061.

[2226] BI-005, BI-010, BI-014, QI-024, WI-003.

[2227] CI-029, CI-116, CI-126, CI-179, CI-197, CI-198, QI-071, WI-005.

[2228] QI-071.

[2229] CI-111, QI-011, QI-063, See also http://www.unhcr.org/news/stories/2018/8/5b75848e4/cant-save-life-give-comfort.html.

[2230] QI-036, See also http://www.unhcr.org/news/stories/2018/8/5b75848e4/cant-save-life-give-comfort.html.

[2231] QI-011.

[2232] CI-023, EI-065, LI-107, LI-129.

drowned.[2233] Another man, from Myaung Nar in southern Buthidaung Township, recalled, "There were babies' bodies floating in the water".[2234]

994. Drownings were prevalent in those villages where crossing large bodies of water were the only way to escape. Many drowned in Min Gyi, Maungdaw Township, when trying to escape from the shore, located on the long bend of a wide river.[2235] One man recalled that the river was so high that elderly people and children were not able to cross, with many of them drowning. His young son probably drowned: "He was trying to swim with us, but he was young, only 7 years old. The rest of the family could cross by swimming, but we don't know what happened to him."[2236] Similarly, in Gu Dar Pyin, Buthidaung Township, many people tried to cross a nearby river to escape the violence, but this also led to drownings. One villager described seeing 10 to 12 people drown in the river, mostly women.[2237]

995. People also drowned after being shot at and forced to jump into the water. An elderly man recalled the military shooting at a group trying to cross the river, some of whom jumped in the water and drowned:

> *My grandson, who was three-years old, died when my daughter-in-law jumped into the river, while crossing the canal. The military started shooting at people who were about to cross the river. She was afraid and jumped into the river with her son. The child drowned and we found his body later on.*[2238]

996. In certain locations, babies were thrown into the river by security forces and intentionally drowned.[2239] One woman described seeing soldiers throwing a number of infants and babies, taken from their mothers, into the river at Maung Gyi Taung in Buthidaung Township. Some of their parents protested and were killed, while others managed to rescue their children from the river. She said that other mothers lost their children as they were trying to cross the river: "The children could not hold on properly and they were lost in the water".[2240]

997. A large number of people died when boats capsized on the journey to Bangladesh, across the Naf River or in the treacherous open waters of the Bay of Bengal. The Bangladesh Border Guard Police recovered more than 100 bodies from the Bangladesh side of the border. Many people saw boats capsize, people drown, and dead bodies floating in the water.[2241] One witness saw a boat capsize as she was crossing a river, and all passengers drowned, including children.[2242] Another man recalled the large number of dead bodies he saw in the water when he reached the Bangladesh side of the border: "There were many people crying there, mourning their drowned family members".[2243]

998. Members of the Mission witnessed the aftermath of a boat that had capsized in the Bay of Bengal on the coast of southern Bangladesh, in Imani, approximately 12 kilometres north of Shamlapur, on 31 October 2017. The boat capsized in waves not far from the shore and 10 people drowned, including elderly women and children.

Disposal of bodies

999. The "clearance operations" resulted in a large number of corpses, strewn across villages, inside houses, along roads, in paddy fields or floating in ponds or rivers. Many also saw dead bodies on their journey to Bangladesh, often in or near burned villages.

[2233] LI-129.

[2234] LI-107.

[2235] See this chapter, section D.1.a: Most serious incidents.

[2236] LI-097.

[2237] LI-063.

[2238] CI-023.

[2239] CI-046, EI-030, EI-050, WI-021.

[2240] EI-030.

[2241] EI-045, WI-016.

[2242] CI-123.

[2243] QI-111.

Witnesses able to return to their villages after "clearance operations", normally after nightfall, saw large numbers of dead bodies of their neighbours and relatives. However, others who returned to their villages were unable to find the bodies of relatives who they had witnessed being killed.[2244]

1000. In a number of locations, the security forces burned the bodies of Rohingya who had been killed.[2245] One person from Koe Tan Kauk village, Rathedaung Township, saw Tatmadaw soldiers carrying bodies and putting them in a boat, which was then burned.[2246] Another witness saw a large number of burned bodies in Kha Maung Seik, Maungdaw Township, which he said had been collected in one location.[2247] Another villager from Yae Khat Chaung Gwa Son village tract, Maungdaw Township, observed soldiers collecting dead bodies and putting them inside houses before setting the houses on fire.[2248] Similarly, in Chut Pyin, bodies were burned in a house.[2249] One witness watched for two hours as soldiers collected dead bodies and threw them into a burning house.[2250] Following the mass killing in Min Gyi, bodies were burned in three large pits dug for this purpose, while the bodies of multiple women were burned in the houses where they were subjected to mass gang rapes.[2251]

1001. In other locations, the Tatmadaw buried bodies in mass graves. Gravesites have been documented in a number of the locations where mass killings took place, including Maung Nu, Gu Dar Pyin, and Inn Din.[2252] The Mission has received further reports of soldiers and security forces digging graves and burying multiple bodies in other locations.[2253] One man saw in a house the bodies of women and girls who had been shot, but was forced to flee the shooting. When he returned some hours later, he found that the bodies had been moved into a pit.[2254] Another man returned to his village in Ah Lel Than Kyaw to find a number of bodies of men who had been shot thrown into a well.[2255] The Mission also heard repeated reports of bodies thrown into rivers, ponds and paddy fields.[2256]

1002. The information points to a concerted effort by the Tatmadaw to dispose of Rohingya corpses following the "clearance operations" in villages. The manner in which the bodies were disposed of, including through the preparation of large pits, both to burn bodies and to bury them, and the use of vehicles to transport corpses and the use of other equipment, suggests both a level of pre-planning and an intention to destroy criminal evidence. This has been consolidated by subsequent terrain clearance through bulldozing, removing evidence of burned bodies and graves. It is likely that hundreds, and possibly thousands, of bodies have been burned, buried or subsequently destroyed.

1003. The Tatmadaw were also witnessed collecting dead bodies in military vehicles, and removing them.[2257] In particular, in central Buthidaung Township, bodies were wrapped in plastic sheets by soldiers and then removed in military vehicles from the village tract of Chin Tha Mar, the location of the Maung Nu mass killing.[2258] Bodies were then removed in military vehicles and trucks. One villager from Chin Tha Mar, reported seeing a number of large trucks being driven away, each containing bodies.[2259] Another witness saw military trucks leave and later return to the village several times. He believed that soldiers were transporting bodies to the military base.[2260]

[2244] CI-079, LI-055, LI-083 LI-099, WI-002, WI-003.
[2245] CI-030, LI-020, LI-048, LI-059, LI-072, LI-088, QI-002, QI-003, QI-004, QI-035, RI-004, V-075.
[2246] XI-001.
[2247] QI-029.
[2248] LI-020.
[2249] CI-177, CI-186, CI-191.
[2250] CI-186
[2251] See this chapter, section D.1.a: Most serious incidents.
[2252] See this chapter, section D.1.a: Most serious incidents.
[2253] EI-047, CI-111, CI-187, CI-195, WI-011.
[2254] CI-111.
[2255] CI-129, LI-112.
[2256] CI-004, CI-014, CI-015, CI-021, CI-146, CI-183, LI-046, LI-055, LI-063, LI-080, LI-094.
[2257] CI-016, CI-035, EI-017, LI-055.
[2258] CI-027, CI-109, CI-195, LI-020, LI-046, LI-055, LI-080, QI-042, WI-017, V-067, V-75, V-077.
[2259] LI-020.

1004. The Mission notes the considerable efforts of some Rohingya victims to return to their villages, normally after nightfall, and perform funerals, a significant cultural and religious practice. These funerals were often done hurriedly, with a number of bodies placed in one makeshift grave.[2261]

Death toll of the 2017 "clearance operations"

1005. Quantifying the number of people killed or injured during the "clearance operations" is challenging. This is due in part to the nature of the "clearance operations". Large numbers of people were killed without witnesses, and their bodies were subsequently systematically disposed of, including through burnings, terrain clearance and bulldozing vast areas of northern Rakhine. These difficulties are compounded by the lack of accurate available demographic data on the Rohingya population of Rakhine State. While the Myanmar authorities have maintained detailed lists of Rohingya villagers in northern Rakhine State, obtained through the annual compilation of "household lists", this information is not available. Further, Rohingya people were not included in the Myanmar national census in 2014 and so there is no public record of their numbers at that time. No comprehensive casualty recording process has been undertaken by any actor to date. On 14 November 2017 the Tatmadaw's Investigation Team presented results of its investigation into the "terrorist attacks" and subsequent "military operation" in which it only makes reference to 520 people killed, almost none of whom were Rohingya civilians. This is patently at odds with the facts as established and assessed by the Mission.[2262]

1006. Rohingya community volunteers in the refugee camps in southern Bangladesh have been developing detailed casualty lists, compiling information directly from family members. These listed the names, ages and villages of people killed, or presumed killed. The assessment lists 9,208 Rohingya as killed and an additional 1,358 whose whereabouts are unknown, presumed disappeared or killed, 2,157 people in detention and up to 1,834 victims of rape.[2263] These figures do not include non-violent deaths, such as those who drowned *en route*, or otherwise perished. This list was incomplete and at the time of reporting remains a work in progress. The Mission is unable to verify this list. It notes that the numbers are in the range of other statistical studies.

1007. For example, a series of six health surveys have provided quantitative data on casualties, providing estimates that between 9,425 and 13,759 Rohingya lost their lives in Myanmar between 25 August and 24 September 2017, of whom between 6,759 and 9,867 died from violence. At least 730 of these were Rohingya children under the age of five.[2264] While informative, these figures only record the deaths of family members witnessed by respondents to the survey, and should be considered conservative estimates.[2265] In addition, it should be noted that these estimates only relate to the first month of the "clearance operations". Other statistically based estimates have indicated significantly higher numbers.[2266]

[2260] CI-196.

[2261] CI-006, CI-023, CI-030, CI-039, CI-114, CI-115, CI-122, CI-127, CI-128, CI-131, CI-194, EI-014, LI-029, LI-041, LI-077, LI-114, LI-119, LI-131, QI-004, QI-005, QI-011, QI-026, WI-016, WI-032, ZI-001.

[2262] The reported findings of the Investigation Team refer to 376 "ARSA Bengali Terrorists" killed, 131 "ethnic/Hindu/Bengali people" and 13 "members of security force". Global New Light of Myanmar, "Information released by the Tatmadaw True News Information Team on the findings of the Investigation Team in connection with the performances of the security troops during the terrorist attacks in Maungtaw region, Rakhine State" (14 November 2017).

[2263] K-153.1.

[2264] Médecins Sans Frontiers, *Rohingya crisis - a summary of findings from six pooled surveys* (9 December 2017).

[2265] Ibid.

1008. Information collected by the Mission through the course of its fact-finding into the 2017 "clearance operations" broadly corresponds with the numbers indicated in these efforts to date, and suggests that the estimate of up to 10,000 deaths is conservative.

(c) Arakan Rohingya Salvation Army

Organization, structure and resources

1009. The Arakan Rohingya Salvation Army (ARSA) emerged following the violence in 2012. The 2012 events, including the participation of the authorities in the violence and widespread human rights violations against the Rohingya, combined with increasing oppression affecting all aspects of Rohingya life, served as a trigger for many of the founding and early members.[2267] It first came to public attention in October 2016, when it launched three coordinated attacks on security posts in Rakhine State. It became more visible following its subsequent attacks of August 2017.

1010. In its early stages, the organization did not have a name or clearly defined goals.[2268] It was loosely organized around the principle of seeking justice for the Rohingya Muslim community. Initially, the movement may have been open to engagement with the authorities and to finding a political solution, particularly in view of the democratic opening in Myanmar during this period.[2269] The group appears to have waited for the 2016 transfer of power to the civilian government, hoping it would bring positive change in the promotion and protection of Rohingya rights. However, in the absence of any visible improvements for the Rohingya in the months after the NLD took office, the group prepared its military strategy.[2270]

1011. On 9 October 2016, the group launched its first offensive action against government targets, carrying out three attacks on BGP posts in Maungdaw Township. It adopted an official name, Harakah-al-Yaqin (Faith Movement), only after these attacks.[2271]

1012. In March 2017, the organization opened a Twitter account, and issued its first public statements, using the English name Arakan Rohingya Salvation Army.[2272] ARSA issued a series of public statements in English about its objectives and intentions, reiterating its goal to "defend" the Rohingya and their rights. ARSA noted in its first press statement, released on Twitter on 10 March 2017:

> *...our sole objective is to defend, salvage and protect the innocent Rohingya indigenous native ethnic community of Arakan State with our best capacities as we have the legitimate right under international law to defend ourselves in line with the principle of self-defense. In doing so, our defensive attacks have been aimed only at the Burmese terrorist government and its terrorist military regime in accordance with international norms and principles until our demands are filled.*[2273]

[2266] For example, the report of International-State Crime Initiative (ISCI) have provided an estimate of a final death toll of 22,000 to 25,000, see ISCI, *Genocide Achieved, Genocide Continues: Myanmar's Annihilation of the Rohingya* (Queen Mary University, 19 May 2018), p.14. See also: ASEAN Parliamentarians for Human Rights, "The Rohingya Crisis: Past, Present and Future" (Summary of findings, 21-24 January 2018), which noted that out of approximately 688,000 new arrivals since 25 August at the time of APHR's visit, over 36,000 children were reported to have lost at least one parent and over 7,700 were reported to have lost both parents.

[2267] LI-121, LI-122, QI-099, XI-007, XI-008, BM-024, BM-025, V-094; See chapter V.B: Systemic oppression and persecution of the Rohingya.

[2268] QI-099.

[2269] LI-122, BM-024, BM-025.

[2270] BM-024, BM-025, V-129, ARSA/PR/01/2017.

[2271] @ARSA_Official in its biography on Twitter describes itself as "formerly called Faith Movement or Harakah Al Yaqeen".

[2272] See: https://twitter.com/ARSA_Official

[2273] BM-025. See ARSA Press Release, ARSA/PR/01/2017, 10 March 2017.

1013. In the same press release, ARSA elaborated a 20-point list of demands, asking for a range of political, economic, social and cultural rights for Rohingya, as well as requesting independent investigation of all allegations, including by the United Nations,[2274] and accountability for past abuses.[2275]

ARSA claimed its target was the Tatmadaw, rather than civilians or members of other ethnic groups:

> *ARSA, in principle, strictly does not allow any of our members to attack civilians, their places of worship and properties regardless of their religious and ethnic background.*[2276]

1014. ARSA does not have stated religious motivations, but a seemingly secular ideology with a strong Muslim identity.[2277] While high-level Myanmar officials imply that ARSA seeks an independent state, homeland or caliphate,[2278] the Mission has not seen such statements from ARSA.[2279]

1015. ARSA has both a military wing and a political wing.[2280] The military wing is organized hierarchically, led by a small group of commanders, known as the Supreme Council, with decision-making powers.[2281]

1016. The Commander-in-Chief is known as Ata Ullah, although he may also operate under other pseudonyms. Credible sources indicate that he is a Rohingya Muslim born outside Myanmar to a Rohingya refugee family, who spent much of his life in Saudi Arabia and Pakistan. He is reported to have returned to Myanmar at some point between 2012 and 2016. Ata Ullah first gained international recognition as ARSA's leader after releasing a video following the ARSA attacks of 9 October 2016.[2282] Since the opening of the ARSA Twitter handle in 2017, his signature appears on all public statements, denoting him as Commander-in-Chief. Ata Ulla appears to maintain secrecy around his identity, and it is reported that very few ARSA members have met or seen him.[2283]

1017. ARSA members at the military leadership level were responsible for clusters of villagers,[2284] below which were village-level groups, referred to as "cells".[2285] Individual members had responsibilities at each level,[2286] receiving instructions and communications along the chain through Internet-based messaging applications. Village leaders then communicated those orders to supporters inside the villages.[2287]

1018. ARSA members were loosely divided into different roles according to assignments and expertise. These included recruitment, training, and a group of fighters sometimes referred to as the "Tiger Group".[2288] Others were involved in the production of locally made explosives, intelligence-type activities and sentry duty of villages.[2289] ARSA did not have military style uniforms,[2290] although there are credible references to some of them wearing black,[2291] which is also visible in some of the videos posted online.

[2274] ARSA, Press Release, ARSA/PR/08/2017 on 6 September 2017.

[2275] ARSA, Press Release, ARSA/PR/01/2017, 10 March 2017.

[2276] ARSA, Press Release, ARSA/PR/27/2018, on 31 January 2018 See also: ARSA, Press Release, ARSA/PR/01/2017 on 10 March 2017. ARSA, Press Release, ARSA/PR/02/2017, 30 May 2017.

[2277] BM-025; See also, ARSA public statements 1 and 5.

[2278] For example, on 11 September 2017, the Office of the Commander-in-Chief: "Because they (the Rohingya) don't have citizenship, and they are not "Nationality" and not a recognized ethnic group, there is no way they could ask for a self-administered zone. That's why they will remove the governing structure (in Rakhine State) with whatever means possible. They will remove all the ethnic people, everyone except their own kind, in the region. They will make sure the government and other ethnic people cannot re-enter the region."; Part 6 of the "Talk on Rakhine issue and security outlook" Facebook Post (removed, post on file with the Mission).

[2279] BM-025; See also, all ARSA Statements.

[2280] BM-003, BM-025, BM-024

[2281] QI-099, BM-025, QM-013.

[2282] Video available at: https://www.youtube.com/watch?v=qcCPxEod87o

[2283] K-159, V-097.

[2284] QI-099, K-159.

[2285] BM-025.

[2286] CI-140, QI-099, QI-100, QI-103, XI-137.

[2287] LI-122, QI-99, QI-102, BM-003.

[2288] QI-099, XI-008.

1019. The political wing of ARSA is made up of five people who live outside Myanmar and who are authorised to represent the organization.[2292] They appear to have responsibility for the political and media strategy of the organization, including the public statements issued on ARSA's Twitter feed. Since the October 2016 attacks, ARSA has issued at least 31 written press releases, as well as videos and messages on Twitter.[2293]

1020. The number of ARSA members and supporters has varied over time. The three 2016 attacks were carried out by a small group of fighters.[2294] However, their relative success was a turning point in terms of support. The publicity garnered by the Government's response increased ARSA's visibility, both domestically and internationally, which encouraged Rohingya men to support ARSA, and for some to formally join it.[2295] Moreover, the 9 October 2016 violence led to the first series of Tatmadaw "clearance operations" and triggered an increase in the oppressive, discriminatory and abusive treatment of the Rohingya by the Myanmar authorities.[2296] As a result, between October 2016 and August 2017, ARSA grew stronger in both its membership and its support base.[2297]

1021. The number of ARSA members and supporters varied from village to village, with information indicating that there may have been at least ten ARSA supporters in each village tract where they were active.[2298] However, the extent of their reach was not consistent across all villages in the three townships of northern Rakhine.[2299]

1022. Total numbers of members and supporters are difficult to ascertain. The actual membership seems to have been small but the support base was certainly in the hundreds. This includes the "last minute" mobilization of many Rohingya, with many of those who participated in the 25 August 2017 attacks mobilized only shortly before that day or on the day itself.[2300] However, overall membership and support for ARSA represented a minority of the total population.

1023. Supporters claim to be motivated by the need to fight long-standing discrimination against the Rohingya and the denial of human rights.[2301] Some had personally suffered oppression and abuse by the Tatmadaw or other security forces.[2302] One young man said he joined ARSA after having been tortured over a period of days while detained by the Tatmadaw following the October 2016 violence.[2303] Another man saw his mother and brother killed in the 2012 violence and, as a result of this experience, as well as other oppressive measures, he joined ARSA:

> *The military's goal was to kill us all. Because of all these abuses, we decided to try to protect ourselves. We needed to establish a group to defend our rights.*[2304]

1024. ARSA retained a strong Muslim identity as a Rohingya group, and recruitment at the village level was sometimes conducted through local religious leaders. This may have been due to their influence among the Rohingya population, rather than their religious function

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[2289] CI-137, CI-140, QI-099, QI-100.

[2290] LI-054, BM-003.

[2291] V-075.

[2292] ARSA, Appointment of Official Representatives, ARSA/PR/21/2017, on 16 November 2017.

[2293] See: https://twitter.com/ARSA_Official

[2294] V-094

[2295] CI-137, LI-121, LI-124, QI-102, XI-007.

[2296] See this chapter, section D.2.b: The build-up to 25 August 2017.

[2297] LI-121, BM-025.

[2298] CI-140, LI-054, QI-099, QI-103, YI-029.

[2299] BM-025.

[2300] CI-140, LI-054, LI-121, QI-103, XI-007, BM-003, BM-029, BM-049, QM-013, V-079.

[2301] CI-140, LI-121, LI-124, QI-099, QI-100, XI-007, XI-008, BM-024.

[2302] CI-137, CI-140, LI-122, QI-103.

[2303] QI-103.

[2304] LI-122.

per se.[2305] Religious scholars, known as *Moluvis*, approached potential supporters, often outside mosques, particularly in the months prior to the 2016 and 2017 ARSA attacks.[2306] Potential members were initially asked to undertake sentry duty for their village, and subsequently sometimes to join the attacks.[2307]

1025. While joining ARSA may largely have been voluntary,[2308] credible public reports indicate that ARSA used intimidation and coercion and pressure, as well as its influence in the community, to push people into joining its ranks.[2309] Boys under the age of 18 were also recruited, and participated in activities.[2310] One man mobilised directly prior to the 2017 attacks explained:

> *On the night of the attack, I wasn't informed in advance. The leader came to my house at around 3.30am and told me to come and fight. I felt unsure but I felt pressured to go as they were in my house.*[2311]

1026. It appears that some members were able to leave ARSA.[2312] One member who participated in the October 2016 attacks was shot in the hand by the Tatmadaw. He believed that ARSA was going to provide better support in the attack itself in terms of participants and weapons. He was surprised by the lack of backup, as well as the violent response by the military, and so renounced his membership. He noted that "there was not a problem not re-joining".[2313]

1027. A level of secrecy surrounded ARSA membership. Members and supporters did not necessarily know who else was affiliated, even within the same village. An oath of secrecy appears to have been required,[2314] with members stating that they had been required to promise not to talk about ARSA or betray it.[2315] This seems to have been a strategy to protect members, given the Tatmadaw's interest in ARSA activities.[2316]

1028. Although ARSA denies having any links with foreign terrorist organizations,[2317] it was reported after the 25 August 2017 attacks that international Islamist terrorist organizations such as al-Qaeda called for public support for the Rohingya.[2318] This appears to have been unsolicited. The following day, ARSA issued a press release explicitly rejecting links to Al-Qaeda, the Islamic State (Daesh or ISIS), Lashkar-e-Taiba and all other transnational terrorist groups, noting that they "do not welcome the involvement of these groups in the Arakan conflict".[2319] The ill-equipped nature of ARSA, as outlined below, lends credibility to those claims,[2320] and the Mission has seen no information that would suggest such links. ARSA has, however, received financial support from the Rohingya diaspora.[2321]

[2305] LI-124, BM-025.

[2306] LI-054, LI-089, LI-124.

[2307] LI-054, LI-074, LI-124, YI-010.

[2308] CI-137, CI-140, LI-054, LI-074, LI-124, QI-103, QI-100, XI-008.

[2309] LI-054, XI-009, QM-013, V-098.

[2310] CI-137, XI-008.

[2311] LI-054.

[2312] LI-054, LI-089.

[2313] LI-089.

[2314] LI-054, QI-102, LM-007, V-159.

[2315] LI-054, QI-102, WI-044, BM-003, LM-007.

[2316] BM-003, EM-001, QM-013.

[2317] ARSA, Statement, ARSA/PR/12/2017, 14 September 2017, XI-007, XI-008, BM-025, V-099, V-100 V-101, See also Official Video of ARSA, 18 August 2017, https://www.youtube.com/watch?v=NJoWeV1DIFM&feature=youtu.be.

[2318] V-254, V-255.

[2319] ARSA, Statement, ARSA/PR/12/2017, 14 September 2017.

[2320] BM-049.

[2321] BM-003, BM-025, QM-013, V-094.

Training and weaponry

1029. Training received by ARSA members and supporters varied greatly. A core group of ARSA members received some military training, including in weaponry.[2322] Some who had received weapons training then replicated it for others, although often without weapons, by using hand gestures and wooden models.[2323] Other members were provided with basic instructions on self-defence techniques, the use of swords and hand-to-hand combat.[2324]

1030. ARSA supporters mobilised shortly prior to the 2017 attacks had no training and little information about the group.[2325] As one young man explained:

> *I joined ARSA about one or two months before the August 2017 attacks. I didn't receive any training or weapons. On the night of the attack, I wasn't informed in advance. I heard gunshots around 1am in the distance. The leader came to my house at around 3:30am and told me to come and fight. But I only had my small tool for digging.*[2326]

1031. One of the goals of the 9 October 2016 attacks was to obtain weapons.[2327] During those attacks, ARSA did obtain a small number of firearms, including from the BGP Headquarters at Kee Kan Pyin (Ta Na Shock), Maungdaw Township.[2328]

1032. Regardless, in the 2017 attacks, most ARSA members were without firearms,[2329] but equipped with homemade weapons such as sticks, knives, swords and slings-shots and some homemade explosives.[2330] Some participants noted that even these types of homemade weapons were difficult to obtain, given the Tatmadaw's confiscation of knives and other bladed objects from Rohingya households after October 2016.[2331]

1033. At the village level, those who were mobilised to participate were reassured that weapons and proper training would be provided at the right moment, although this did not eventuate.[2332] One participant stated that ARSA members had said that he and others would be provided with training and weapons: "But all they did was give us a stick and said that we should pretend that it is a weapon. We never got any training or weapons."[2333]

1034. ARSA did have some capacity to produce some crude IEDs[2334] but that capacity is questionable, both in terms of production and execution.[2335] As one ARSA member elaborated, "The IEDs were made locally by members and are not particularly strong. We use them just to scare the military."[2336] In the attack in which he participated, the explosive was not directed at the checkpoint as intended,[2337] and no military casualties were reported. While the Myanmar Government's list of ARSA attacks mentions the use of IEDs by

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[2322] CI-140, QI-099, BM-049.

[2323] LI-121, QI-102, BM-049.

[2324] CI-137, CI-140, QI-102, XI-008.

[2325] CI-141, LI-054, LI-089, LI-121, BM-049, V-075, V-102.

[2326] LI-054.

[2327] LI-121, LI-122, XI-008, Facebook posts of Commander in Chief, removed, on file with Mission.

[2328] LI-121, LI-122, BM-003. Furthermore, according to Government official statements, ARSA looted 65 to 68 firearms and many rounds of ammunitions during the 9 October 2016 attacks, of which 37 were recovered by 16 November 2017; Multiple Facebook Posts of the Commander-In Chief See, removed, on file with Mission.

[2329] CI-140, LI-089, QI-099, QI-103, XI-007, BM-025.

[2330] CI-137, CI-140, QI-102, QI-103, XI-007, XI-008.

[2331] LI-054, See this chapter, section D.2.b: The build-up to 25 August 2017.

[2332] LI-054, LI-089, CI-137.

[2333] LI-089.

[2334] CI-022, CI-137, CI-140, QI-099, XI-007, BM-003.

[2335] CI-140, V-102.

[2336] CI-140.

[2337] CI-140.

ARSA, none of the casualties sustained by the Myanmar security forces were reported as having been caused by an IED.[2338]

1035. The Government reported that, during the 2017 "clearance operations", it confiscated "15 assorted arms and 97 ammunitions" and "67 home-made IEDs".[2339] These figures demonstrate ARSA's weaponry capacity at the time, in particular when juxtaposed against the military capacity of the Tatmadaw. Photographs of the confiscated weapons, published in the Government investigation report, show one relatively modern assault rifle and a number of sticks and hand-made bladed weapons.[2340]

ARSA attacks on 9 October 2016

1036. On 9 October 2016, ARSA launched three attacks on the BGP headquarters in Kyee Kan Pyin village tract (Maungdaw Township), on the BGP camp in Nga Khu Ya (Maungdaw Township) and on a BGP camp in Koe Tan Kauk (Rathedaung Township).[2341] All three attacks were carried out by fighters mainly armed with sticks, knives and a few firearms. Casualties occurred on both sides.[2342] According to the Government reports, nine police officers and eight assailants were killed.[2343] ARSA claimed responsibility for these attacks.[2344] In response, the military and the BGP launched "area clearance operations" with the stated purpose of recapturing guns and munitions looted by ARSA.[2345]

1037. The Government has alleged that a number of further ARSA attacks involving IED-denotations and ambushes of security force convoys took place on 12 and 13 November 2016, killing two soldiers.[2346] The Mission was not able to corroborate these incidents. According to a statement issued by the Tatmadaw on 14 November 2016, the October and November 2016 attacks led to 69 ARSA fighters, seven Tatmadaw soldiers and 10 police officers killed, five Tatmadaw soldiers and six police officers injured, and 234 Rohingya arrested.[2347]

[2338] See the following posts from the Information Committee: "Breaking News 7: After being declared as terrorist group, extremist terrorists continue making violent attacks" (Facebook Post, 26 August 2017), https://www.facebook.com/InfomationCommittee/posts/786695324836909; "Breaking News 8: Extremist terrorists continue carrying out violent attacks (Facebook Post, 26 August 2017), https://www.facebook.com/InfomationCommittee/posts/786222098217565; "Breaking News 10: Terrorists trying to destroy Maungtaw" (Facebook post, 27 August 2017), https://www.facebook.com/InfomationCommittee/posts/786691611503947; "Breaking News 12: Extremist terrorists continue carrying out violent attacks" (Facebook post, 29 August 2017), https://www.facebook.com/InfomationCommittee/posts/787636841409424; "Breaking News 14: Terrorist hideouts discovered, items provided by int'l organizations seized" (Facebook post, 30 August 2017), https://www.facebook.com/InfomationCommittee/posts/787634948076280; "Breaking News 17: ARSA extremist terrorists continue setting houses on fire (Facebook post, 30 August 2017), https://www.facebook.com/InfomationCommittee/posts/788328661340242

[2339] Global New Light of Myanmar, "Information released by the Tatmadaw True News Information Team on the findings of the Investigation Team in connection with the performances of the security troops during the terrorist attacks in Maungdaw region, Rakhine State" (14 November 2017).

[2340] Global New Light of Myanmar, "Information released by the Tatmadaw True News Information Team on the findings of the Investigation Team in connection with the performances of the security troops during the terrorist attacks in Maungdaw region, Rakhine State" (14 November 2017).

[2341] CI-118, CI-119, Information Committee, Interim Report of the Investigation Commission on Maungtaw (Facebook Post, 2017), https://www.facebook.com/InfomationCommittee/posts/665265300313246; K-154.2

[2342] CI-137, LI-121, LI-122.

[2343] Information Committee, "Interim Report of the Investigation Commission on Maungdaw Republic of the Union of Myanmar" (Facebook post, 3 January 2017) https://www.facebook.com/InfomationCommittee/posts/665265300313246

[2344] K-154.2.

[2345] V-068, See this chapter, section D.2.a: The 2016 violence.

[2346] Information released by the Office of the Commander-in-Chief (Facebook post, now defunct), on file with Mission.

[2347] Information released by the Office of the Commander-in-Chief (Facebook post, now defunct), on file with Mission.

ARSA attacks on 25 August 2017

1038. Early on 25 August 2017, ARSA attacked around 30 security force outposts in northern Rakhine State. ARSA subsequently claimed responsibility in relation to the attacks.[2348] A majority of attacks took place in the early hours of 25 August 2017, with a number of reported subsequent attacks in the following days of 27 and 28 August 2017. The Office of the Commander-in-Chief claimed that there were 38 "engagements" on 25 August.[2349] The findings of the Tatmadaw's investigation team, reported in November 2017, refer to a total of 94 "engagements" between 25 August and 5 September 2017.[2350] The Mission has been unable to corroborate these figures.

1039. The majority of targets chosen were BGP posts and checkpoints, with the exception of army base 552 in Chin Tha Mar village tract, Buthidaung Township. The attacks were carried out by ARSA members together with some local villagers mobilised in support.[2351] The Mission corroborated 17 separate attacks, including the attack against army base 552. There is credible information that an additional 17 attacks took place. The Government originally estimated the number of assailants as ranging from 10 to 20 in some locations, 100 to 300 in others, and an alleged 1,000 in relation to the attack on Myin Hlut (Mayrulla), Maungdaw Township, police station. However, the Tatmadaw's investigation team later referred to between 6,200 and "more than 10,000" ARSA participants on 25 August.[2352] The Mission was not able to verify these numbers. Although the Government officially declared 5 September 2017 to be the end of the offensive,[2353] Tatmadaw "clearance operations" continued for some time after this date.[2354] There is nothing to indicate that the Tatmadaw suffered any casualties during any post-25 August "engagements". The Mission did not find credible information to substantiate the Government's claims of continuing offensives or clashes with ARSA in September.

1040. On 10 September 2017, ARSA declared a one-month ceasefire, "in order to enable humanitarian actors to assess and respond to the humanitarian crisis in Arakan State".[2355] After the deadline for the cessation of the ceasefire, hostilities did not resume. However, four months later, in January 2018, ARSA claimed responsibility for an ambush of a military convoy in Turaing village, San Kar Pin Yin village tract, northern Maungdaw Township. Video footage of this ambush, stamped with ARSA's logo, shows a number of fighters shooting from the bushes towards a military vehicle.[2356] No casualties were reported.[2357]

[2348] K-154.2.

[2349] Information released by the Office of the Commander-in-Chief (Facebook post, now defunct), on file with Mission.

[2350] Global New Light of Myanmar, "Information released by the Tatmadaw True News Information Team on the findings of the Investigation Team in connection with the performances of the security troops during the terrorist attacks in Maungdaw region, Rakhine State" (14 November 2017).

[2351] QI-099.

[2352] Global New Light of Myanmar, "Information released by the Tatmadaw True News Information Team on the findings of the Investigation Team in connection with the performances of the security troops during the terrorist attacks in Maungdaw region, Rakhine State" (14 November 2017).

[2353] "Speech delivered by Her Excellency Daw Aung San Suu Kyi, State Counsellor of the Republic of the Union of Myanmar on Government's efforts with regard to National Reconciliation and Peace" (Facebook post, 19 September 2017), https://www.facebook.com/state.counsellor/posts/speech-delivered-by-her-excellency-daw-aung-san-suu-kyi-state-counsellor-of-the-/1121130291354519.

[2354] For example, Office of the Commander-in-Chief stating that "engagements were on the decrease after 5 September"; (Facebook post on file with Mission). CI-043, QI-008, QI-010, QI-011, QI-025, QI-061, QI-062.

[2355] ARSA Press Release, ARSA/PR/10/2017 on 10 September 2017.

[2356] BM-049.

[2357] See ARSA Statement, ARSA/PR/23/2018 on 7 January 2018. Information Committee. See also, Information Committee, "Soldiers and civilians injured due to the attack by a group of armed insurgents who were already under investigation" (Facebook Post, 5 January 2018), https://www.facebook.com/InfomationCommittee/photos/a.639477959558647.1073741828.639456206227489/855053054667802/; Facebook posts of the Office of the Commander-in-Chief, on file with Mission.

1041. According to the Government, 376 "assailants" and 13 members of security forces died in the 2017 attacks, and 15 assorted arms, 97 ammunitions, 30 packs of gunpowder and 67 homemade mines were confiscated from alleged ARSA members.[2358]

1042. Following the 25 August 2017 attacks, the Government declared ARSA a "terrorist organization", and thus a threat to national security.[2359] ARSA supporters could be held responsible for acts of terrorism and the attacks conducted by ARSA treated as crimes that qualify as offences under Myanmar's Penal Code or the 2014 Counter-Terrorism Law.[2360]

1043. ARSA stated that the 2017 attacks were in response to what it viewed as increased oppression of the Rohingya over the previous weeks and months, including arbitrary arrests and interrogations, extortion, increasing restrictions on freedom of movement, and disappearances. A "blockade" of Rohingya in Zay Di Pyin, Rathedaung Township, appears to have had a particular impact.[2361] On 15 August 2017, Ata Ullah appeared in a video, with four armed fighters, warning the Myanmar military to stop committing abuses. He spoke about the longstanding suffering and oppression of the Rohingya, and urged the Myanmar Government to stop the Zay Di Pyin "blockade".[2362]

1044. ARSA further stated that the "ramping up" of the military in northern Rakhine State and the increasing oppression by the Tatmadaw and other security forces in early August 2017 were an attempt to "derail" the work and recommendations of the Advisory Commission on Rakhine State, led by former United Nations Secretary-General Kofi Annan.[2363] The final report of the Commission[2364] set out solutions for peace and development in Rakhine State and included a series of recommendations, for example on citizenship for the Rohingya.[2365] The ARSA attacks commenced hours after the release of the Commission's final report in Yangon on 24 August 2017.

1045. ARSA denied that its attacks were linked to the Advisory Commission report. They may have been prompted by an accidental IED explosion on 25 August, raising concerns among ARSA leadership that the Tatmadaw would be alerted to their activities.[2366] It appears that, shortly after this explosion, an order was sent through a messaging application telling ARSA "cell" leaders to mobilise male villagers.[2367] However, this accidental explosion only appears to have brought forward plans by one to two days.

1046. ARSA was able to carry out multiple, coordinated attacks in a highly controlled and militarised environment, but with little military capability. The attacks employed "hit and run" tactics with predominantly untrained civilians, mostly wielding sticks and knives. The ARSA attacks caused minimal Tatmadaw casualties compared to their own losses.

1047. It appears, therefore, that the objectives of the ARSA attacks may not have been military, but aimed at eliciting a response by the Tatmadaw (as in October 2016), with the broader goal of drawing renewed global attention to the Rohingya situation.[2368] As one ARSA member stated:

[2358] Global New Light of Myanmar, "Information released by the Tatmadaw True News Information Team on the findings of the Investigation Team in connection with the performances of the security troops during the terrorist attacks in Maungdaw region, Rakhine State" (14 November 2017).

[2359] The Republic of Union of Myanmar Anti-Terrorism Committee Order no 1/2017," (27 Aug 2017) http://www.statecounsellor.gov.mm/en/node/968.

[2360] V-120.

[2361] See this chapter, section D.2.b: The build-up to 25 August 2017.

[2362] XI-007, V-101.

[2363] ARSA statement, 25 August 2017 (https://twitter.com/ARSA_Official/status/900904120076435457).

[2364] V-119.

[2365] BM-025, V-117.

[2366] CI-140, LI-121, QI-099, XI-008.

[2367] V-068.

[2368] CI-137, CI-140, XI-008, XI-009, EM-001.

> *The main aim of the attacks was to get international attention, as we knew the response [of the Tatmadaw] would be brutal. We hoped that, if the world could see their response, they would finally understand our suffering.*[2369]

1048. Some ARSA members noted an instruction not to use weapons against the Tatmadaw in the 2017 attacks, as the purpose of the attack was in fact to draw attention to the Rohingya cause.[2370] While it is not known whether this instruction was followed by all, given that some weapons were used, it adds weight to the conclusion that the operation was aimed at drawing attention, rather than any military success.

1049. Another ARSA participant in the August 2017 attacks characterized it as follows:

> *We were a group of men, approaching the check-post with sticks and stones. But then the military started shooting. We could not respond as we only had sticks and stones. It was not really like a military attack by us, it was a protest or uprising, claiming our rights.*[2371]

Allegations of human rights abuses committed by ARSA

1050. ARSA has been accused of committing abuses against both the Rohingya population and other ethnic minority groups in Rakhine State. These allegations are serious and warrant full investigation. The Mission itself has been constrained by its lack of access to Myanmar. For its investigation on the 2016 and 2017 situation in Rakhine State, because of the mass-exodus of Rohingya to Bangladesh, the Mission had access to large numbers of Rohingya victims and was able to conduct interviews in line with its established methodology. It had no comparable access to victims of alleged abuses committed by ARSA, given that most remained in Rakhine State. In line with protection of sources and genuine fear of reprisals for those cooperating, the Mission did not reach out in other ways to those affected communities inside Myanmar.

1051. Furthermore, even in Bangladesh, the Mission noted a widespread reluctance of Rohingya to talk about ARSA and any alleged abuses committed by it. It may be that Rohingya are fearful of ARSA or that they wish to avoid detracting from the gravity of the violations perpetrated against themselves. The secretive nature of ARSA and lack of knowledge about it may have also contributed.

Killing of Rohingya informants

1052. Allegations of abuses perpetrated by ARSA against Rohingya have mostly concerned the mistreatment or killing of Rohingya individuals suspected of providing information to Myanmar authorities. ARSA has stated that its objective was only to attack Tatmadaw or security related targets and has denied killing civilians.[2372] However, it used threats and intimidation, including violence, against the population to protect its plans and activities and to ensure secrecy. Informants, known locally as "*tabbe*", were present within the Rohingya community and provided information to the Myanmar authorities. ARSA took steps to control them, including through beatings and killings.[2373] One interviewee stated that, just before the August 2017 violence, he was approached by a religious scholar to monitor the activities of three persons suspected of passing information on ARSA activities to the BGP in Myin Hlut (Mayrulla).[2374]

1053. On 29 June 2017, the Global New Light of Myanmar, a government newspaper, published a list of 35 alleged incidents involving the killing of 38 civilians in Maungdaw Township between October 2016 and June 2017. Eleven of these incidents were reportedly perpetrated by "men wearing black masks".[2375] Other sources refer to other alleged killings of Rohingya in this period, reportedly also perpetrated by ARSA. Collectively, allegations suggest that more than 50 "informants" may have been killed by ARSA in this period.[2376]

[2369] XI-008.

[2370] CI-137, CI-140.

[2371] LI-121, BM-003.

[2372] ARSA, Press Release, ARSA/PR/09/2017 of 30 May 2017.

[2373] LI-122, QI-016, QI-102, QI-103, XI-008, YI-010, YI-022, V-0940.

[2374] YI-100.

1054. While the Mission was unable to verify each of these specific incidents, credible reports indicate that there were killings of Rohingya and that responsibility for many of the killings may be attributable to ARSA.[2377] The Mission received information from two people acknowledging the killing of two informants in U Shey Kya village tract, Maungdaw Township.[2378] Other sources, referring to the same killings, stated that they occurred after the names of eight local ARSA members were given to the BGP, leading to BGP night raids and arrests.[2379]

1055. A number of additional smaller militant Rohingya groups appear to have been active in northern Rakhine State and may also have been involved in controlling or killing informants.[2380] The Mission reviewed a number of videos showing men wearing black masks giving death threats to villagers, whom they referred to by name and who they suspected had passed information to the authorities. ARSA stated that the men in black masks were not ARSA members. The Mission was not able to verify the origin of these videos or their content.[2381]

Killings of members of other ethnic groups

1056. Open sources reported the first case of alleged killings of ethnic Rakhine villagers by ARSA on 24 June 2017. ARSA members reportedly confronted four individuals who came across an ARSA IED cache, while foraging in Kyun Pauk Pyu Su village tract, northern Maungdaw Township. Two were shot dead and two, one of whom was injured, fled and alerted the authorities. When the authorities returned to the location of the incident, the materials were not found.[2382] The Mission was not able to corroborate this incident,[2383] although credible sources indicate that this may indeed have been attributable to ARSA.[2384]

1057. On 3 August 2017, six to seven men and women of the Mro ethnic group were allegedly killed in the hills of Maungdaw Township near to Kine Gyi, the NaTaLa village where they lived. The Myanmar Government has stated that ARSA is responsible for these killings, allegations that were shared widely and publicly within Myanmar.[2385] The Mission has not been able to verify this incident or its perpetrator. Credible information indicates, however, that the killings may have been related to the illegal narcotics trade.[2386] ARSA has denied involvement in this incident.[2387]

1058. The Government further alleged that ARSA was responsible for an attack on twenty Daignet villagers, reportedly from Ran Khar Zay Divillage, in Kar Lar Day Hpet village tract, travelling towards Aung Zan village in Aung Zan/Bauk Shu Hpweit village tract, northern Maungdaw Township. While it was first reported that 19 of the group were missing following an attack by ARSA, it was later reported that five of the group had been killed.[2388] The Mission has been unable to verify this incident.

[2375] Global New Light of Myanmar, "List of civilian murdered in Maungtaw District (2016 October to 2017 June 27)" (29 June 2017).

[2376] LM-017, V-094, V-115, V-075.

[2377] BM-003, LM-007, LM-017, QM-013, V-067, V-075.

[2378] CI-137, XI-009.

[2379] V-094.

[2380] BM-025.

[2381] LM-017.

[2382] V-068.

[2383] See this chapter, section D.2.b: The build-up to 25 August 2017.

[2384] V-067, K-156.2.

[2385] Information Committee, "Press Release on the Situation in Maungdaw" (Facebook post, 11 August 2017),para 4, https://www.facebook.com/InfomationCommittee/photos/pcb.778752418964533/778752095631232/?type=3&theater

[2386] BM-025, LM-007, V-094.

[2387] ARSA, Statement, ARSA/PR/04/2017, of 6 August 2017; ARSA Statement, ARSA/PR/05/2017, at 13 August 2017.

1059. ARSA has also been accused of the alleged killings and disappearances of up to 100 Hindu men and women from Kha Maung Seik village tract, in northern Maungdaw Township. It is alleged that, on 25 August 2017, ARSA killed 45 Hindus in the hamlet of Au Nauk Ka Maung Seik[2389] and a similar number from a second hamlet in the same village tract, Ye Bauk Kyar village (Reak Kya Para).[2390] Referring to this incident, Amnesty International has concluded that ARSA is responsible "… for at least one, and potentially a second, massacre of up to 99 Hindu women, men, and children as well as additional unlawful killings and abductions of Hindu villagers in August 2017".[2391] ARSA is also alleged to be responsible for the killings of six other Hindus, on the outskirts of Maungdaw town, near Myo Thu Gyi village on 26 August 2017.[2392] The Myanmar Government has stated that ARSA was responsible for these incidents.[2393] On 27 September 2017, the Myanmar authorities organized a public event in Kha Maung Seik with national and international media representatives, during which it displayed a large number of corpses. It stated the bodies were of the Hindu victims of Ah Nauk Kha Maung Seik that had been excavated from a mass grave.[2394] ARSA denies any involvement in these killings.[2395]

1060. The Mission interviewed seven Hindus from Au Nauk Kha Maung Seik (Shab Bazar) and nearby villages who witnessed these events or were victims of abuses in September 2017.[2396] The Mission has verified that a large number of Hindu victims were killed on 25 August 2017 in Au Nauk Kha Maung Seik. However, the information received was contradictory, including regarding the language spoken by the perpetrators, which, according to the accounts taken, was a key identifying feature since the perpetrators reportedly had their faces covered. The Mission's information is insufficient to make any determinations on reasonable grounds regarding the identity of the perpetrators. The Mission has also been unable to verify the facts regarding the killing of Hindus in Myo Thu Gyi.

Burning of non-Rohingya villages

1061. On 28 August 2017, three days after the commencement of the "clearance operations", an audio order to burn down non-Rohingya villages was allegedly given by

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[2388] V-113; Ministry of Information, "Interview with the family members of the villagers slain by ARSA extremist terrorists" (4 September 2017), http://www.moi.gov.mm/moi:eng/?q=news/4/09/2017/id-11434; Multiple Facebook posts, now defunct, of the Commander-in-Chief, on file with the Mission.

[2389] V-067; Global New Light of Myanmar, "Interview with bereaved families of Hindus killed by ARSA terrorists" (27 September 2017), http://www.statecounsellor.gov.mm/en/node/1041

[2390] V-067.

[2391] V-108.

[2392] Information Committee, "Breaking News 22: Local and foreign media continue coverage of news in Maungtaw and Sittway" (Facebook post, 1 September 2017), https://www.facebook.com/InfomationCommittee/posts/789155627924212; Information Committee, "Interview with Hindus who fled from their villages" (Facebook post, 1 September 2018), https://www.facebook.com/InfomationCommittee/posts/788602791312829; Presidents Office, "Hindu women and children escape from terrorists," (3 September 2017), State Counsellors Office, "Interview with bereaved families of Hindus killed by ARSA terrorists" (27 September 2017) http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-7656, V-067.

[2393] See, for example, Information Committee, "Interview with Hindus who fled from their villages" (Facebook post, 1 September 2017), https://www.facebook.com/InfomationCommittee/posts/788602791312829, Information Committee, "The words of bereaved families of Hindus killed by ARSA terrorists" (Facebook post, 27 September 2017), https://www.facebook.com/InfomationCommittee/posts/807089859464122; Multiple Facebook posts, now defunct, of the Commander-in-Chief, on file with the Mission.

[2394] V-106, Global New Light of Myanmar, "Slaughtered Hindus testament to brutality of ARSA terrorists" (28 September 2017).

[2395] ARSA Statement, ARSA/PR/13/2017, on 27 September 2017 ; ARSA Statement, ARSA/PR/28/2018, 25 May 2018.

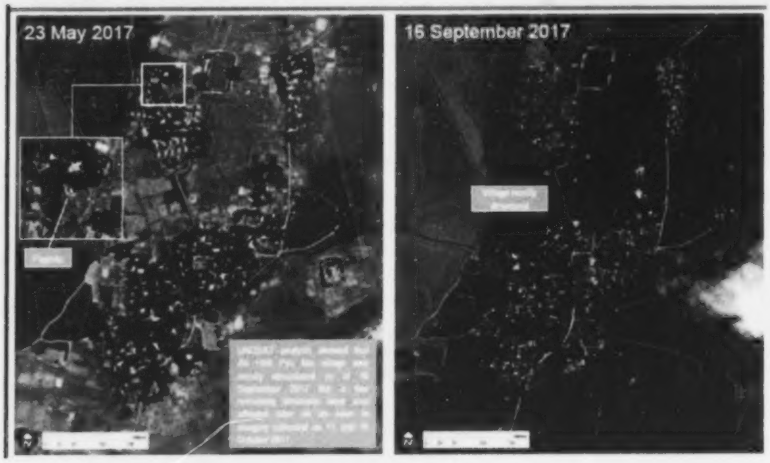
[2396] LI-023, LI-024, LI-025, LI-026, QI-019, QI-020, QI-021.

Ata Ullah through a messaging application.[2397] The Mission received a copy of the audio file, which contained an instruction for Rohingya to burn down non-Rohingya villages. It was unable to ascertain the authenticity of the recording or its source.

1062. Regardless of the authenticity of the audio message, ASRA burned down the Rakhine village of Ah Htet Pyu Ma village.[2398] A Rohingya interviewee saw the village burning. He described hearing an exchange of fire between ARSA and the police at an outpost near Purma Fume in Ah Htet Pyu Ma village tract in the early morning of 25 August 2017. "I heard the gunfire and I saw the trailers of gunfire passing in each direction. I got out of bed and went outside to see. It was about two miles away and it went on for one and a half hours." The interviewee said that the Rakhine villagers fled the following day and, after that, ARSA set the village on fire.[2399] Approximately 100 Rakhine families had been living there. While ARSA did not claim responsibility for burning villages, it did claim an attack on a police station in Ah Htet Pyu Ma village tract.[2400]

1063. Satellite imagery analysis confirms the burning of Ah Htet Pyu Ma. The imagery reveals that there are two parts of the village, the northern part, containing structures distributed in a more organized manner and made of higher quality materials, indicative of an area inhabited by ethnic Rakhine, and a more southern part, likely Rohingya. Both parts of the village were burned.[2401] This contrasts with the burning that took place in a large majority of village tracts, where the Rakhine hamlets were left intact.[2402]

Comparative images of Ah Htet Pyu Ma on 23 May and 16 September 2017, showing burning of both Rohingya and ethnic Rakhine settlements



1064. ARSA also reportedly burned the Mro village of Khu Daing (Pa Da Kar Ywar Thit village tract) on 28 August 2017.[2403] Satellite imagery analysis confirms the burning and destruction of Khu Daing by 16 September 2017. The Mission has credible information that Rohingya or ARSA were responsible for the burning of this village.[2404] Other sources also report that ARSA was responsible for violent acts against Mro villagers as part of this attack, with a number of persons injured and others assumed killed,[2405] although the Mission has not been able to verify these allegations.

[2397] K-163.01, K-163.02.

[2398] QI-018, V-067.

[2399] QI-018.

[2400] K-154.2.

[2401] Satellite image analysis prepared for the mission by UNITAR-UNOSAT.

[2402] See this chapter, section D.1.b. Patterns of serious human rights violations by the Myanmar security forces.

[2403] Information Committee, "Breaking News 17: ARSA extremist terrorists continue setting houses on fire" (Facebook post, 30 August 2017), https://www.facebook.com/InfomationCommittee/posts/788328661340242; V-067, Global New Light of Myanmar, "Seven more civilians killed in Rakhine" (31 August 2017).

[2404] RI-008, LM-007, LM-017, V-067.

Image of Khu Daing from 25 May 2017 showing an intact settlement

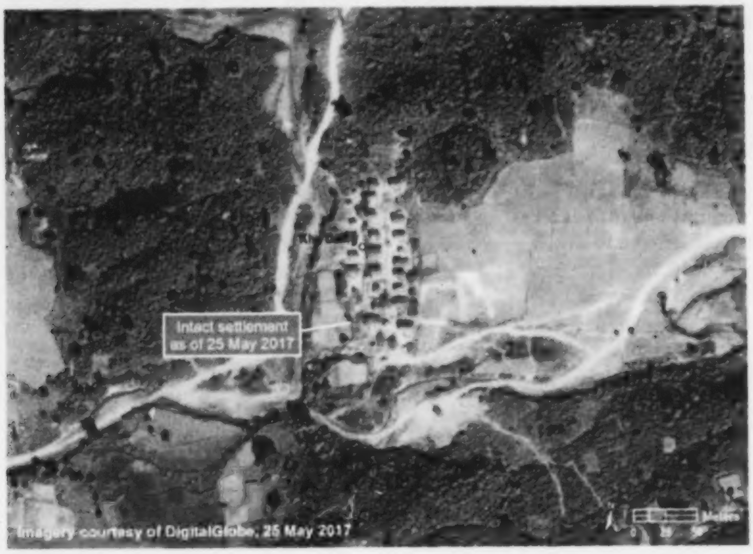
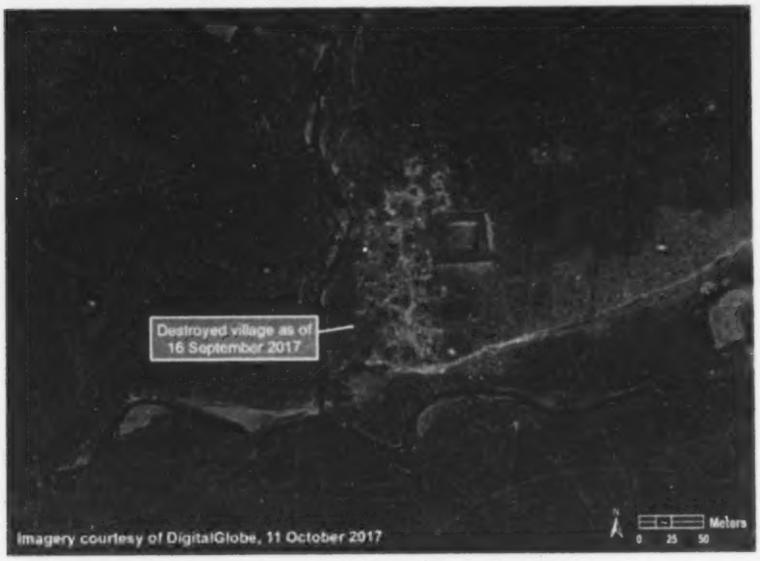

Intact settlement as of 25 May 2017
Imagery courtesy of DigitalGlobe, 25 May 2017
Meters
0
25
50

Image of Khu Daing from 11 October 2017 showing a burned and destroyed settlement. The burning was first detected on 16 September 2017


Destroyed village as of 16 September 2017
Imagery courtesy of DigitalGlobe, 11 October 2017
N
Meters
0
25
50

1065. In numerous Facebook posts, the Tatmadaw has indicated that ARSA was responsible for burning other Rakhine and ethnic minority houses and villages.[2406] The information in these posts is unclear and no other evidence has been provided to support these claims. There appears to be no other official Government sources that provide clarity around these allegations. The Mission has not been able to verify these assertions.

[2405] V-067, Global New Light of Myanmar, "Seven more civilians killed in Rakhine" (31 August 2017).

[2406] Multiple Facebook posts, now defunct, of the Commander-in-Chief, on file with the Mission.

Government allegations regarding the burning of Rohingya villages by ARSA

1066. The Government has alleged that ARSA set fire to multiple Rohingya villages, and that the widespread fires that led to the destruction of Rohingya villages in northern Rakhine State were a result of ARSA's own actions.[2407] Indeed, in its own internal investigation of the 2017 crisis, the Tatmadaw stated that ARSA was responsible for the burning of Rohingya houses and that the hundreds of thousands of Rohingya who fled Myanmar did so on instruction, and because they feared ARSA.[2408] ARSA denies these allegations.[2409]

1067. The Government has provided no credible evidence to support its version of events. To the contrary, the Mission has established that the burning of Rohingya villages was systematically undertaken by Tatmadaw soldiers, together with other security forces and ethnic Rakhines, as well as other ethnic and religious minorities, through the use of "launchers" and other means.[2410]

2. A foreseeable and planned catastrophe

1068. The 2017 ARSA attacks and ensuing "clearance operations" did not occur in a vacuum. They were foreseeable and planned.

(a) The 2016 violence

Overview

1069. On 9 October 2016, ARSA launched a small first offensive against three Border Guard Police posts in northern Rakhine State. Nine police officers were killed. Security forces, led by the Tatmadaw, responded by conducting "clearance operations" across an "area clearance zone" between Taungpyoletwa and Maungdaw, in central Maungdaw Township.

1070. In the weeks that followed, Rohingya victims who fled to Bangladesh revealed that these operations had been characterised by serious human rights violations, including torture, rape and sexual assault, killings, and the destruction of homes and mosques. The same tactics and violations were seen in this operation as later in 2017, albeit on a smaller scale. The means and methods of attack, which would later form the *modus operandi* of the August 2017 operations, were already present. By December 2016, satellite imagery analysis undertaken by Human Rights Watch estimated that 1,500 structures had been burned in eleven separate locations in Maungdaw Township.[2411] Active military operations continued for at least two months, and the Myanmar Government declared an end to the operation on 16 February 2017.[2412] Ultimately, some 87,000 Rohingya fled to Bangladesh.

[2407] Information Committee, "Breaking News 7: After being declared as terrorist group, extremist terrorists continue making violent attacks" (Facebook post, 28 August 2018), https://www.facebook.com/InfomationCommittee/posts/786695324836909; Multiple Facebook posts, now defunct, of the Commander-in-Chief, on file with the Mission.

[2408] Facebook posts, now defunct, of the Commander-in-Chief, on file with the Mission.

[2409] ARSA, Statement, ARSA/PR/06/2017, on 28 August 2017.

[2410] See this chapter, section D.1.a: Patterns of serious human rights violations by the Myanmar security forces.

[2411] Human Rights Watch, "Burma: Military Burned Villages in Rakhine State" (13 December 2016), https://www.hrw.org/news/2016/12/13/burma-military-burned-villages-rakhine-state.

[2412] The Republic of the Union of Myanmar - President's Office, "Tatmataw ends area clearance operations in northern Rakhine", http://www.president-office.gov.mm/en/?q=print/7288.

1071. A Government Investigation Commission, led by the Vice-President, and the security forces' own inquiries cleared the security forces of wrongdoing, endorsing the "lawfulness and appropriateness of the response".[2413]

Verified incidents of the 2016 "area clearance operations"

1072. The 2016 "area clearance operations" took place across a large area of northern Maungdaw, with at least 11 different locations affected. The Mission focused its fact-finding work on two key incidents, which are considered to be among the most grave. This focus should in no way detract from the scale or significance of the 2016 violence, which warrants further investigation and documentation.

Pwint Hpyu Chaung

1073. Pwint Hpyu Chaung village tract yai khutis in northern Maungdaw Township, approximately 12 kilometres north of Maungdaw town. It is made up of three Rohingya hamlets. The Tatmadaw led "area clearance operations" in Pwint Hpyu Chaung on 11 and 12 November 2016.[2414]

1074. Following the 9 October 2016 ARSA attacks, soldiers had increased visits, held regular meetings with the village elders and came to the village twice a week to look for "bad people".[2415]

1075. The situation deteriorated early on 11 November 2016, when soldiers detained a large number of men attending prayers at the local mosques. Between 60 and 80 men were detained and held for two or more hours before being released. Some were subjected to beatings and other ill-treatment.[2416] One man described being taken from a mosque to the school building and tied together with ropes. As well as being kicked and beaten with rifle butts, the soldiers burned his beard and chin with matches. The detainees were called "Bengali" and "Kalar".[2417]

1076. After their release, the men who had originally been detained were told by the Tatmadaw commander to return at 12pm to the village meeting place. Word spread that other men from the village should attend also. Approximately 60 men came to the meeting place as instructed at around 12pm on 11 November. They were taken away to Buthidaung prison in two military trucks and detained for at least one year. At least one individual, an elderly man, died on the way to prison.[2418] One man who later visited relatives in the group believed from their appearance that they were ill-treated.[2419]

1077. From 3am the following morning, 12 November 2016, a large number of Tatmadaw soldiers and police arrived in the village tract in military vehicles and commenced an "area clearance operation", moving through the three hamlets. Weapons were fired, followed by the burning of houses, starting from the southern end of the village. Villagers fled, many running for nearby forested areas or neighbouring villages. Petrol was used to burn houses, as were weapons described as "launchers". The burning continued all day, with dozens of houses set alight.[2420]

1078. Although the number of people killed or wounded is unknown, up to nine died from bullet wounds.[2421] One interviewee saw four of his male relatives, between the ages of 13 and 77, having their hands tied and being put inside a house that he later saw on fire. He has not seen any of them since, and believes that they were killed.[2422] A group of village elders who were able to return a few days later discovered the bodies of four or five people burned in a house.[2423]

[2413] See chapter X: Impunity and accountability

[2414] LI-133.

[2415] CI-142, LI-133, QI-104.

[2416] CI-142, CI-143, LI-127, LI-133, QI-104.

[2417] LI-127.

[2418] CI-142, CI-143, LI-096, LI-127, QI-104.

[2419] QI-104.

[2420] CI-142, CI-143, CI-150, LI-127, LI-133, QI-104.

[2421] CI-142, CI-143, CI-150, LI-127, LI-133, QI-104, QI-100, XI-009.

1079. There are strong indications that a number of women and girls were subjected to sexual and gender-based violence during the operation.[2424] One witness reported how he hid and watched his niece being gang raped and then shot and killed by soldiers.[2425]

1080. The group of village elders recorded the impact of the "area clearance operation" on their village tract. They listed approximately 170 houses as burned and destroyed, together with two mosques, two or three madrassas and 16 shops. The shops were also looted and more than 1,000 animals and dozens of motorcycles were stolen.[2426] Credible satellite imagery analysis confirms that at least 65 structures were burned and destroyed in the village tract between 10 and 17 November 2017.[2427]

1081. The perpetrators of the violations were Tatmadaw soldiers, accompanied by police.[2428]

1082. While the majority of villagers from Pwint Hpyu Chaung eventually fled to Bangladesh, a number returned in late 2016 or early 2017 and lived in tents and makeshift shelters, receiving international humanitarian assistance. Since the 2017 "clearance operations", it appears that the majority of the villagers, if not all, have relocated to Bangladesh.[2429]

Dar Gyi Zar

1083. Dar Gyi Zar village tract, known to the Rohingya as Choto Go Zi Bil, is made up of a series of hamlets, located three to four kilometres south of Pwint Hpyu Chaung in northern Maungdaw Township. The Tatmadaw launched "area clearance operations" in Dar Gyi Zar on 12 November 2016 and in Yae Khat Chaung Gwa Son village tract, directly to the north. The operation in Dar Gyi Zar continued for two days.

1084. The "area clearance operation" commenced in Dar Gyi Zar with the arrival of two or three helicopters, from which soldiers opened fire using automatic weapons. This caused panic, with villagers running to seek shelter. People were shot and killed or injured, both outside and inside houses. Shooting from the helicopters continued for up to two hours. At least one woman was shot and killed inside her house and witnesses saw up to 15 other bodies of people killed by gunfire from the helicopters.[2430] A number of villagers, particularly women and children, headed to the Kula Bil area in the south of the village tract.

1085. The following morning, a group of up to 200 soldiers entered Dar Gyi Zar along the main road. They opened fire in an indiscriminate manner and started to burn houses, including by using "launchers". People again fled; some were shot as they ran.[2431] One witness estimated that he saw 16 people shot.[2432] People ran and hid in the paddy fields.

[2422] LI-133.

[2423] CI-143, LI-127, LI-133, QI-104.

[2424] CI-150, LI-127, QI-100.

[2425] LI-127.

[2426] CI-142, CI-143, LI-133.

[2427] Human Rights Watch, *Updated Damage Assessment of Affected Villages in Maungdaw District*, 18 November 2016.

[2428] CI-142, LI-127, LI-133, QI-100.

[2429] LI-127, QI-104.

[2430] CI-139, LI-123, LI-125, LI-135, QI-101, XI-009.

[2431] CI-139, LI-123, LI-135.

[2432] LI-123.

From there they watched as the village was systematically burned.[2433] Through the course of the day, nearly all of the houses in the village were burned.[2434]

1086. Tatmadaw soldiers captured a group of up to 200 men, women and children, and took them to a paddy field, where they were told to kneel. People were beaten, following which the men and boys of approximately 12 years or older were separated from the group. The men were told to take off their shirts and the women were searched and robbed of jewellery, being touched inappropriately in the process. The women and younger children were then taken and held in a mud-walled house, while the men and boys were kept outside. The women then heard repeated gunfire and the screams of the men and boys outside.[2435]

1087. At sunset, the soldiers left and the women, girls and young children were able to leave the house. The bodies of the men and boys had been put in a pile, or series of piles, and burned using hay, harvested rice and the removed shirts. A number of other witnesses saw the pile of burned bodies. Two weeks later piles of bones were also seen.[2436] The total number of bodies is unclear, although it appears that there were up to 40 men and boys burned, possibly more.[2437] One victim who had been held inside the mud-walled house informed the Mission that her husband and two young sons, aged 10 and 13 years old, had been killed and burned.[2438] Other families were burned in their houses, with the corpses found later by fellow villagers.[2439]

1088. The total number of people killed in Dar Gyi Zar on 12 and 13 November is estimated to be 75, according to a list developed by Rohingya community organizations in the refugee camps of southern Bangladesh.[2440] While the Mission is not able to verify the accuracy of this number, it is consistent with other information received by the Mission of a high number of casualties.

1089. The situation in the surrounding area after the burning of Dar Gyi Zar was very difficult, with large numbers of villagers sleeping in the open and further visits from Tatmadaw soldiers. The local ethnic Rakhine village administrator appears to have negotiated with the Tatmadaw regarding the return of the displaced Rohingya. Eventually some were able to return. They lived in constructed tents and temporary shelters on the sites of their former homes, with intermittent international aid distributions. Others made the journey to the refugee camps in Bangladesh.[2441]

1090. Credible satellite imagery analysis shows that 265 structures were burned and destroyed in the village between 10 and 17 November 2017.[2442] Rohingya community organizations have stated that a total of 400 structures were burned in Dar Gyi Zar, as well as five mosques and 38 shops, which were also looted.[2443]

Sexual and gender-based violence

1091. Rape, gang rape, and other forms of sexual violence were widely perpetrated in the course of the 2016 "area clearance operations". Mass gang rapes, led by the Tatmadaw,[2444] were a significant pattern of the violence from October to December 2016. According to information verified by the Mission, they were perpetrated in Yae Khst Chaung Gwa Son,

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[2433] CI-139, LI-135.

[2434] CI-139, LI-123, LI-135.

[2435] LI-125, LI-126.

[2436] LI-135.

[2437] LI-123, LI-126, LI-135.

[2438] LI-125.

[2439] CI-139, LI-123, LI-135.

[2440] K-153.3.

[2441] CI-139, LI-123, LI-125, LI-126, LI-135.

[2442] V-150.

[2443] K-153.3.

[2444] CI-106, EI-055, EI-091, EI-093, EI-094, EI-095, LI-105, K-127, K-128.

Kyein Chaung and Kyet Yoe Pyin, amongst other locations. A 14-year old girl from Maungdaw described her experience:

> *We were hiding in the forest and the soldiers took my sister, who was 12-year old, and eight other girls. Four of them were raped and killed. Then the soldiers took me. There were around 40 women and girls in the forest. I remember the first man who raped me, feeling all the pain. I became numb to the next three men and then I went unconscious. They were raping most of the women and girls.*[2445]

1092. The Kyet Yoe Pyin "area clearance operation" in Maungdaw Township saw a particularly brutal level of sexual violence. Women and girls were subjected to mass gang rape, forced nudity, sexual humiliation and sexual assault.[2446] One 30-year old survivor, who was pregnant, described how a large group of soldiers arrived in a military truck. They then went house-to-house, taking jewellery, money and other belongings, before raping the women. She said that six members of her family were raped, including her two nieces aged 10 and 15.[2447]

1093. Some of the women and girls who were raped in Kyet Yoe Pyin, were then killed.[2448] One survivor described eight to ten Tatmadaw soldiers entering the house she was in and taking two young girls to the toilet. She held a child in her lap so that the Tatmadaw would realise that she was a mother and would not rape her. The soldiers threw the child aside; five to six men raped her. She said that she had pain everywhere afterwards and bled until she reached Bangladesh. She heard that the two girls who were taken to the toilet died.[2449] Another female survivor, aged 25, from Kyet Yoe Pyin explained that she was gang raped by four Tatmadaw soldiers in her house during this time.[2450]

1094. Despite the "area clearance operations" being focused on an area of central Maungdaw Township, rapes and gang rapes were also perpetrated in Buthidaung Township.[2451] A 25-year old female interviewee from Maung Gyi Taung described how she was gang raped in her house after her village chairman failed to take girls to the local military compound as instructed. She was severely bitten on her forehead, cheeks and left breast. Having lost consciousness, she does not know how many men raped her. She was pregnant at the time of the rape and miscarried shortly afterwards.[2452]

1095. Women and girls were also sexually assaulted and humiliated during intrusive body searches by Tatmadaw soldiers.[2453] A 30-years old woman from U Shey Key, Maungdaw Township stated that the military did the "most embarrassing body checks ever – they would put hands inside our tops, press our breasts and pinch our nipples in front of everyone."[2454] Another woman, aged 20 year from Doe Tan, Maungdaw Township described how the military arrived and surrounded her village and invasively searched the women for jewellery and money. Women were made to sit in a field with their heads down and many women had their headscarves taken off.[2455]

(b) The build-up to 25 August 2017

> *Since October 2016, life had become so difficult. We were not even allowed to put the light on in our house at night, or buy anything at the bazar. We could not pray. The military did not allow our men to sit in a tea stall or in a coffee shop. We could not go to the hospital, even those who were really ill. Because the lights were off in*

[2445] EI-055.

[2446] CI-106, K-076.25, K-076.27, K-076.28, K-076.29, K-076.30, K-076.31, K-076.33, K-076.34, K-076.35, K-076.36.

[2447] CI-106.

[2448] CI-105, CI-106, EI-054.

[2449] K-076.28.

[2450] CI-105.

[2451] EI-094, EI-095, EI-107.

[2452] EI-094.

[2453] CI-105, FI-091, EI-106, K-076.41.

[2454] K-127.

[2455] EI-091.

> *our house, we could not eat anything at night, so we had to go to bed so early. The military also robbed us and our shops in the market.*[2456]

1096. While systematic discrimination and restrictions had long been part of Rohingya life in Rakhine State, the period following the 9 October 2016 attacks saw an intensification of restrictive measures targeting the Rohingya, particularly in northern Rakhine State. These measures, coupled with the increased presence of security forces on the ground, resulted in a wide spectrum of human rights violations against the Rohingya in the period between October 2016 and August 2017.

Campaign of increased intimidation by the Myanmar security forces

Increased presence of security forces

1097. The presence of security forces near Rohingya villages increased following October 2016. New military camps and checkpoints were established inside villages,[2457] for example, a new BGP checkpoint near Tin May, Buthidaung Township;[2458] a temporary military camp in Nan Yar Kone, near Buthidaung town;[2459] and a new police checkpoint in Pa Da Kar Ywar Thit, northern Maungdaw Township.[2460]

1098. Additional troops were stationed inside existing military or BGP compounds[2461] or occupied community structures such as schools and religious buildings.[2462] Following the 9 October 2016 attack on Koe Tan Kauk BGP base, additional Tatmadaw soldiers were stationed in the Chein Khar Li village military compound, located in Koe Tan Kauk village tract, providing additional support.[2463]

1099. In Myin Hlut, Maungdaw Township, early August saw increased foot patrols of 50 to 100 personnel from security forces, and greater movement of military vehicles. Previously, Tatmadaw soldiers were rarely seen in the area.[2464]

1100. This build up became particularly pronounced after 10 August 2017, when elements of the 33rd and 99th LIDs arrived in northern Rakhine State.[2465]

Arbitrary arrest, detention, torture and ill-treatment

1101. The increased presence of security forces resulted in more frequent patrols, during which villagers were often beaten, particularly targeting young men.[2466] These patrols led to a range of other violations against Rohingya, including an increase in arbitrary arrests and looting.

1102. Wealthy, educated and influential men were often targeted for arbitrary arrests, purportedly in an effort to locate ARSA members or gather information about their activities. Those arrested were often beaten or tortured, and accused of being ARSA members, with security forces often saying they were looking for "bad people" or "anti-government people".[2467] Release usually required the payment of bribes.[2468] This practice was widespread across the three townships. One Rohingya man from Pwint Hpyu Chaung, Maungdaw Township, described his experience following the October 2016 attacks:

[2456] LI-084.

[2457] CI-112, CI-115, CI-144, CI-145, LI-053, LI-054, LI-057, LI-073, LI-074, LI-103, LI-105, WI-010.

[2458] CI-115.

[2459] LI-057.

[2460] LI-074.

[2461] CI-119, LI-100, WI-010.

[2462] CI-183, LI-046, QI-101, YI-021, K-063.35.

[2463] CI-119, LI-100.

[2464] QI-111, QI-112.

[2465] V-213, V-231.

[2466] CI-181, CI-182, LI-053, XI-001, YI-006, YI-007.

[2467] CI-007, CI-016, CI-021, CI-028, CI-032, CI- 034, CI-048, CI -071, CI-104, CI-105, CI-106, CI-111, CI-112, CI-118, CI-119, CI-133, CI-134, CI-140, CI-144, LI- 002, LI-030, LI-051, LI-053, LI-066, LI-069, LI-073, LI-074, LI-076, QI-002, QI-014, QI-015, QI-022, QI-038, QI-040, QI-062, QI-102, QI-111, WI-006, WI-044, YI-001, YI-002, YI-003, YI-007, YI-012, YI-021, BM-025, V-073.

[2468] CI-118, CI-145, LI-066, LI-073, LI-074, LI-076, XI-005, YI-003.

> *They broke the door to my shop open, tied me up and beat me for five hours. Then I was taken to the military camp. They kept me for three days and three nights in a kneeling position with my hands tied behind my back. I was together with 25 other Rohingya men. We were not even offered water. They tortured us in many ways: they forced the barrel of the gun in our mouths, stubbed burning cigarettes into our flesh, and dripped hot wax onto our penises. Five men died from the torture. Of the remaining 20 men, 18 were able to pay a huge amount to be released.*[2469]

1103. Villagers from Pa Da Kar Ywarmin gyi Thit, Maungdaw Township, described how, after 9 October 2016, the police would visit their village regularly and arrest men at night. Police accused the men of being part of ARSA and demanded payment for their release.[2470]

1104. Given that those "arrested", apparently for having collaborated with ARSA, were regularly released on payment of bribes, the Mission considers that in many cases the arrests were without legal or factual basis. Rather, it was a tactic employed by Myanmar security forces to oppress, abuse and extort from Rohingya. As one Rohingya witness commented: "To the authorities you are a bad person unless you can pay, then you are good".[2471] It may explain why the wealthiest were often targeted. However, this extortion had a disproportionate impact on poorer members of the community and others who could not pay.

1105. In some cases, detainees have not been seen again.[2472] In May or June 2017, a large group of Tatmadaw soldiers detained six or seven men from Gudar Pyin, Buthidaung Township. The group included an Imam and religious scholars. According to one interviewee, the soldiers brought a list of names of men they were looking for, and sought the assistance of the ethnic Rakhine village chairperson to identify them.[2473] The whereabouts of the men remains unknown.[2474] The number of people who have disappeared in this manner is difficult to estimate. Some think their family members may have been transferred to Sittwe or Buthidaung prison and may have been charged or sentenced for alleged involvement with ARSA. Others suspect they were killed. [2475]

1106. Some people do appear to have been charged and sentenced for the ARSA attacks of 2016, and Rohingya villagers provided information on relatives having been arrested and charged for such acts.[2476] However, reliable or accurate information remains scarce. One interviewee from Myin Hlut, Maungdaw Township, said that, on or around 14 October 2016, the police and military came to his village and searched houses. He ran into the hills with other villagers, but a businessperson and a teacher were detained. According to the interviewee, they were later sentenced to 10 and seven years imprisonment respectively, although he had no information about the charges or trials.[2477]

1107. The government initially reported that 575 persons were detained and charged in connection with the attacks.[2478] No information was provided on the charges applied against those detained and if all had been formally charged with an offence. A judgment issued by Buthidaung Township's court, dated 8 February 2018, listed 416 people tried in relation to the October and November 2016 events under sections 17/1 and 17/2 of the Unlawful Associations Act. Of the 416 people, the judgment indicates that 392 were convicted and 24 acquitted.[2479]

[2469] QI-103.

[2470] CI-144, LI-074.

[2471] QI-114.

[2472] CI-111, LI-002; United Nations Office of the High Commissioner for Human Rights, "FLASH REPORT: Report of OHCHR mission to Bangladesh Interviews with Rohingyas fleeing from Myanmar since 9 October 2016", 3 February 2017.

[2473] YI-014.

[2474] LI-063, YI-013, YI-015, YI-016.

[2475] LI-002, LI-116.

[2476] CI-189, LI-104, QI-111, RI-008.

[2477] QI-111.

[2478] State Counsellor's Office, "470 suspects still under investigation in northern Maungtaw attacks, http://www.statecounsellor.gov.mm/en/node/481. According to the report, of the 575 detained on suspicion of their participation in the 9 October 2016 attacks and subsequent violence, 88 were sentenced, 11 were released, and six died in detention. It further noted that470 suspects remained under investigation.

1108. The Mission also received credible information that from January 2017, "special courts" at the Township and District levels were opened at Myo Thit Taung Ward in Buthidaung Town to try the cases of persons detained in connection with the 9 October 2016 attacks. It is reported that warehouse buildings were transformed into temporary detention facilities during the hearings period, and into courtrooms for the trials. It remains unclear whether the "special courts" were established by law and officially gazetted and if this process was completed before trials were initiated.[2480] In January 2017, detainees in Buthidaung prison were reportedly transported to these "special courts" where expedited trials were conducted. Detainees were reportedly not represented by lawyers nor had access to lawyers during the expedited trials.[2481]

1109. It is alleged that by January 2017, 500 detainees had been tried and sentenced in these special courts, and many of those tried were sentenced to death or life imprisonment.[2482] The Mission notes the lack of clarity regarding whether procedural guarantees were provided, including the presumption of innocence, and the right to review by a higher court. Other credible reports indicated that that children as young as 10-year old were arrested and charged.[2483] There are also multiple credible reports of Rohingya deaths in custody in connection with these arrests and detentions.[2484]

Sexual and gender-based violence

> *For more than a year, we could not sleep in our houses because the military was coming frequently and arresting people, extorting money and taking women.*[2485]

1110. In the months before the "clearance operations" of 25 August 2017, women and girls were raped, gang raped and subjected to sexual slavery across the three townships of Maungdaw, Buthidaung and Rathedaung. Sexual and gender-based violence by soldiers increased after 9 October 2016, with soldiers visiting villages more frequently and either raping women in their homes or taking them to military bases, where they were raped and gang raped.[2486]

1111. For example, in Kyet Yoe Pyin village, Maungdaw Township, one survivor estimated that more than 100 females were raped. She stated that she used to hide her daughters whenever soldiers came.[2487] Similarly, a witness from Hpon Nyo Leik village, Buthidaung Township, described soldiers visiting around twice a week to take women, who were then raped.[2488] In another village, up to 15 women were estimated to have died after excessive bleeding from rapes.[2489] A 20-year old female survivor from Thet Oo Chaung, Maungdaw Township, described how Tatmadaw soldiers came to her village in March

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[2479] K-166.

[2480] K-076.36, K.076.38.

[2481] Ibid.

[2482] K-076.37.

[2483] QI-107, K.076.36, K.076.38, V-257. See also: Ministry of Information, "Child detainee hospitalised for 2nd time" (3 February 2017), http://www.moi.gov.mm/moi:eng/?q=news/2/03/2017/id-10083

[2484] K-076.41, V-215, See also, Special Procedures Communications to the Government of Myanmar, UA MMR 3/2017, (11 July 2017) and UA MMR 4/2016, (21 October 2016), https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23089, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=22815

[2485] LI-117.

[2486] CI-105, CI-119, CI-133, CI-145, EI-094, LI-004, LI-045, LI-059, LI-077, LI-117, QI-063, QI-105, QI-114.

[2487] CI-105.

[2488] LI-077.

[2489] LI-004.

2017 and she was gang raped by three to four Tatmadaw soldiers in her house.[2490] In Koe Tan Kauk village, Rathedaung Township, sexual assaults on women were common and some of the women and girls taken to military camps did not return.[2491]

1112. Witnesses gave corroborating accounts of village administrators or other villagers being asked to supply the women to the military, sometimes in groups of up to 10 women in a night, with one being told that this was to "serve the nation".[2492] In Maung Hna Ma village, Maungdaw Township, a witness saw women and girls being taken to the bases of battalions Nos. 564 and 345. He stated that those who came back had been raped.[2493] Another witness recalled an announcement by megaphone in Chin Tha Mar, Buthidaung Township. It told young women to go to the military camp where they would be taught to sew and do handicrafts. Seven girls went and were never seen again. The witness did not know what happened to them.[2494]

Increased restrictions and oppression

1113. Rohingya had long suffered restrictions on their freedom of movement. This became more pronounced after 2012,[2495] but in the post-October 2016 period Rohingya reported facing ever greater difficulties and restrictions in their movements. Even if a travel permit was issued, travelling between villages required passing through an increasing number of checkpoints, where Rohingya were increasingly exposed to threats, extortion and physical violence. For many it became very difficult, or impossible, to visit family, conduct business, or make a living.[2496] Although many of the restrictions were already in place prior to October 2016, the Mission understands that, after this time, they were more strictly and violently enforced.

1114. One witness recounted his experience at a checkpoint in early August 2017 while travelling to another village tract to visit a family member. He was on his motorbike, together with his grandson, when they were stopped by Tatmadaw soldiers and taken to a nearby military camp. The soldiers forced the witness to shave off his beard and confiscated his motorbike keys, demanding 60,000 Kyat to get them back. He could not pay, so the soldiers beat both him and his grandson and took their phones. They were released only after the chairperson of their village identified them. The motorbike was not returned.[2497]

1115. After 9 October 2016, the Tatmadaw declared the whole of the three townships an "operational area".[2498] The timings of the curfew was extended to 7pm to 6am following the 9 October attacks in Buthidaung and Maungdaw. It was shortened to 9pm until 5am in February 2017.[2499] These curfews were strictly enforced, with villagers subject to arrest, physical violence, or more often extortion by local authorities and police.[2500]

1116. One interviewee reported that, on 11 November 2016, the military arrested a large number of men who were praying in three different mosques in Pwint Hpyu Chaung village tract, Maungdaw Township, outside curfew hours.[2501] As part of the imposition of the curfew, people were not allowed to light up their houses after dark.[2502]

[2490] EI-041.

[2491] CI-119, LI-045, XI-001.

[2492] CI-145, LI-059, LI-117.

[2493] LI-117.

[2494] QI-063.

[2495] See this chapter, section B.2: Denial of the right to freedom of movement.

[2496] CI-112, LI-069, QI-051, QI-110, QI-111, YI-005.

[2497] YI-023.

[2498] V-211.

[2499] V-047.

[2500] CI-118, CI-134, CI-140, LI-066, LI-074, LI-104, QI-113, YI-021, YI-028.

[2501] QI-104.

[2502] LI-084, RI-005.

1117. Movement restrictions and the curfew meant many could not access markets in neighbouring ethnic Rakhine villages to buy and sell goods[2503] or access paddy fields.[2504] Interviewees described needing permission from the village administrator, which often involved payment.[2505] Many could not buy food or medicine.

1118. In the one or two months preceding the August 2017 violence, in some locations Rohingya were no longer able to leave their village, under any circumstances.[2506] As one man from Chut Pyin, Rathedaung Township, explained:

> *Everything changed about two months before the violence. In the past, other village tracts were accessible if you had the relevant token from the chairperson, but suddenly people were no longer able to move between villages using these tokens. Even villages within the same village tract became inaccessible. We were not allowed to go outside the village.* [2507]

1119. Theft, intimidation and extortion by security forces, already a large part of daily Rohingya life,[2508] also increased during this period, largely as a result of the increased presence of the Tatmadaw and other security forces in the region after October 2016.

1120. Rohingya were required to pay exorbitant informal taxes or bribes in all aspects of their personal, business and community life.[2509] Extortion, intimidation and theft took place in the context of regular patrolling by the security forces. The security forces, stole from the Rohingya and regularly looted belongings and valuables, and extorted money.[2510] Rohingya cattle and animals were regularly stolen.[2511]

1121. Theft from Rohingya shops was very common.[2512] One interviewee said that the military would come regularly to his medicine shop in Pa Da Kar Ywar Thit, Maungdaw Township, to extort money. Once, he was detained, beaten, and forced to pay a "fine" to be released.[2513] Another interviewee was forced to close his shop any time the police visited his village; otherwise, they would steal from him.[2514] If the villagers slaughtered an animal, they were forced to share it with the BGP.[2515]

1122. Public gatherings of more than five Rohingya were prohibited after 2012, in accordance with curfew orders imposed at the time.[2516] However, while curfew orders were lifted in most of Rakhine State in September 2014, they have remained in force in Buthidaung and Maungdaw until the present day. It appears this prohibition became more strictly enforced against Rohingya following the October 2016 violence. This measure prevented Rohingya from coming together to practise their faith.[2517] After October 2016, several interviewees reported that mosques and madrassas were locked, closed down or destroyed.[2518] One interviewee, a religious leader from Buthidaung Township, recalled that their madrassas and mosques had been closed after October 2016 and Qur'ans had been destroyed. Due to religious people being targeted, he stopped wearing his religious clothes.[2519] Security forces also engaged in the humiliating and degrading practice of cutting the beards of Rohingya men.[2520]

[2503] CI-122, LI-053, LI-066, LI- 072, LI-084, LI-105, QI-067, WI-007, YI-019.

[2504] LI-045, LI-053.

[2505] LI-053, LI-105, QI-058, QI-059, QI-060, QI-067.

[2506] RI-001, RI-004.

[2507] RI-004.

[2508] See this chapter, section B 7: Other forms of oppression.

[2509] LI-104, XI-008.

[2510] CI-118, CI-119, CI-140, LI-049, LI-053, LI-067, LI-084, LI-118.

[2511] CI-012, CI-105, CI-133, LI-050, LI-057, WI-010.

[2512] CI-047, CI-049, CI-105, CI-112, CI-118, CI-119, CI-133, LI-050, LI-057, LI-084, QI-002, QI-051, QI-063, QI-114, QI-036, WI-005, WI-006, WI-010.

[2513] QI-114.

[2514] QI-036.

[2515] QI-002.

[2516] See this chapter, section C 5: Spreading hate.

[2517] CI-140, LI-053, LI-104, QI-106, XI-008, YI-012.

[2518] LI -049, LI-050, LI-053, LI-066, LI-067, LI-076, LI-104, LI-124, QI-106, QI-111, YI-010, YI-025.

1123. One notable incident during this period was the arson attack against the mosque of Zay Di Pyin, Rathedaung Township, in June 2017, during the month of Ramadan, and the failure of the security forces to protect it. The mosque, which was over 100 years old, was set alight by local ethnic Rakhine,[2521] who also prevented Rohingya villagers attempting to put out the fire.[2522] Rather than assisting, the BGP took a number of religious leaders to their base, where they were forced to sign a document stating that they had set the mosque alight themselves.[2523] It appears that a number of religious items were destroyed, including Qur'ans and the religious garments of the Imam.

1124. During this period, Rohingya houses across the three townships of northern Rakhine State were frequently searched. The authorities confiscated sharp objects, including small knives and other implements used for cooking and harvesting.[2524] One woman noted, "They did not leave a single small tool, not even to clean fish".[2525] These house searches were purportedly in relation to countering insurgent activities, but in practice they deprived Rohingya families of the tools and implements needed to conduct daily activities, and in some cases deprived them of their livelihood. One man noted:

> *In July, soldiers came and took all of our sharp implements, such as knives, cleavers, etc. They only left us with the small scissors used for beetle nuts – this was all that we had to cut food to cook.*[2526]

1125. On 9 June 2016, the General Administration Department, under the authority of the Ministry of Home Affairs, wrote to village administrators in Maungdaw Township regarding the zinc sheets commonly used by Rohingya around their properties. The letter cited a decision by the township management committee prohibiting this type of fence, but authorising the use of fencing with concrete poles and barbed wire.[2527]

1126. Following the October 2016 violence, implementation of this administrative order accelerated. Rohingya villagers in northern Rakhine State were ordered to remove their fences from around their properties. This was widely implemented in the three townships, generally communicated by the ethnic Rakhine village administrator. In some instances, the village administrator was accompanied by security forces, with soldiers or police removing fences by force. Non-compliance with this order would often result in beatings and fines.[2528] An interviewee from Kha Maung Seik village tract, Maungdaw Township, reported:

> *A few months before the August 2017 incident, the village chairman, an ethnic Rakhine, accompanied by the military, demanded us to remove the fences from the yards and around the houses. They visited the village together with the police three times in one month since the order of removing the fences was issued. The villagers who did not implement the order were beaten and had to pay fines to the chairman.*[2529]

1127. While this measure was purportedly justified by "security considerations", it greatly limited the ability of Rohingya to keep their homes private, which is of particular cultural importance. Villagers felt more vulnerable and exposed to intimidation and harassment by security forces and ethnic Rakhine, making it difficult for them to shelter safely in their own homes.[2530] It also had a disproportionate impact on women, who felt particularly vulnerable and insecure, as bathing and toilet facilities were often located within those fences in the compounds of the houses.[2531] One young Rohingya woman explained that it was difficult for her to go to the bathroom after the fences had been removed. She described it as having to use "open toilets".[2532] The effect of the removal of fences was precisely to open up Rohingya households to greater surveillance and to facilitate the movement of security forces into and across Rohingya property.

[2519] LI-124.

[2520] LI-046, LI-051, LI-068, LI-127, YI-023.

[2521] CI-145, CI-178, LI-129.

[2522] CI-145, LI-129.

[2523] CI-145, CI-178.

[2524] BI-001, CI-044, CI-048, CI-100, CI-118, CI-119, CI-122, CI-182, LI-023, LI-053, LI-054, LI-066, LI-105, QI-002, QI-014, QI-052, QI-061, QI-069, RI-006, RI-007, WI-002, WI-027, WI-031, WI-032, YI-003, YI-010.

[2525] CI-118.

[2526] QI-069.

[2527] K-076 41.

[2528] CI-044, CI-046, CI-048, CI-112, CI-115, CI-118, CI-120, LI-105, QI-110, QI-111, YI-019, YI-025.

[2529] CI-048.

1128. On 5 March 2017, the Maungdaw District Fisheries Department issued a letter regarding a decision of the District Administration Office in Maungdaw that only NVC holders could go fishing, and fishermen would be examined at security checkpoints.[2533] Several interviewees reported that they were no longer allowed to fish after this.[2534] One villager from Ah Lel Than Kyaw village tract, Maungdaw Township, explained:

> *The Tatmadaw closed the dock for boats on the shore in our village. They also removed the engines and fans from all our fishing boats. The soldiers said that they were doing this as per government order. Then they went to each village and said that people could only use their boats and recover the engines and fans if they accepted the NVC.*[2535]

1129. Similar restrictions were reportedly applied to people collecting firewood, forest products and others who needed to travel to make a living.[2536] Families and communities were denied their livelihoods and food security was affected.

1130. Pressure to accept the NVC increased in the months leading up to August 2017. On 8 February 2017, the Government appointed a Steering Committee to expedite the process.[2537] Despite this, there was little information about the process and many interviewees stated that they refused to accept the cards, which they viewed as likely to entrench their status as "Bengali immigrants", while providing no guarantee for citizenship.[2538] Some Rohingya believed that accepting the NVC would prevent them from retaining title to property and make them lose their land.[2539] Frequent meetings with Rohingya villagers were convened by the authorities, often organized by the ethnic Rakhine village administrators, together with the immigration authorities (LaWaKa), and often attended by BGP, police and soldiers.[2540] While the purpose of these meetings appears to have been to persuade the Rohingya to accept the cards, they also instilled fear. Rohingya attending these meetings were subjected to threats and intimidation, including warnings that failure to accept would result in greater restrictions on their freedom of movement and livelihoods.[2541] Others were told to accept the NVC or they would be forced to leave the country.[2542]

1131. A series of more targeted and aggressive meetings were held with Rohingya elders in mid-August 2017, convened by the BGP and Tatmadaw soldiers, often including members of the recently deployed 33rd and 99th Light Infantry Divisions, sometimes together with ethnic Rakhine village administrators.[2543] They took place in a number of locations, including Chut Pyin and Koe Tan Kauk in Rathedaung Township, and Min Gyi and Kyauk Pan Du in Maungdaw Township. Some of the most brutal "clearance operations" subsequently took place in these locations. Threats were made regarding the continued refusal of the NVCs at these meetings.[2544]

[2530] K-104.

[2531] A/HRC/34/67.

[2532] QI-069.

[2533] Ministry of Agriculture, Animal Husbandry and Irrigation District Fisheries Department Maungdaw District, Maungdaw Letter No. Fisheries-District/Maungdaw-13/ 2017(1829/1831); K-076.40.

[2534] LI-045, LI-053, LI-077, LI-103, QI-106, YI-005, YI-012.

[2535] RI-006.

[2536] K-076.42.

[2537] Formation of the Steering Committee for issuance of National Verification Card (NVC) in Rakhine State for those who will undergo verification for citizenship, Notification No.21/2017 (8 February 2017).

[2538] CI-178, CI-194, CI-196, CI-198, LI-066, RI-008.

[2539] WI-040, V-073, V-151.

[2540] BI-017, CI-178, CI-179, CI-181, CI-182, CI-194, CI-195, LI-057, LI-066, QI-058, QI-060, QI-066, QI-070, QI-106, RI-010, RI-017, WI-016, WI-042, YI-004, ZI-006, V-073, V-222.

[2541] CI-182, LI-045, LI-053, LI-066, LI-077, LI-103, QI-106, WI-041, YI-004, YI-005, YI-012, V-073.

[2542] CI-182, CI-179, CI-181, CI-183, CI-192.

1132. One significant meeting was held on 22 August 2017, convened by members of the 33rd LID at the school located in the Rakhine hamlet of Chut Pyin. During the meeting, leaders of the 33rd LID threatened the Rohingya elders in attendance, including elders from Chut Pyin as well as from other nearby villages.[2545] A commander of the 33rd LID, whose name is on file with the Mission[2546], explained that together with his Division he had recently been deployed from Kachin State. He stated that Rohingya must accept the NVC, or else they would be killed, as had happened to villagers in northern Myanmar.[2547] The meeting was also attended by the Rakhine chairman of Chut Pyin.[2548] Following the meeting, village leaders discussed the proposal, but eventually reported back that they would not accept the NVC.[2549] After this, villagers were reportedly confined to their homes and oppression increased further.[2550]

1133. Immediately preceding the 25 August 2017 attacks, the ethnic Rakhine chairman of Min Gyi had organized a meeting during which he made a speech instructing Rohingya to take the cards[2551] or they "would not be allowed to stay in Myanmar".[2552] One interviewee from Min Gyi (Tula Toli) described:

> *There were meetings where we were told, "You must accept the NVCs". We always refused. This pressure was for a year but the worst incident was two or three months ago [prior to August 2017 violence] when the chairman came with the military, who were armed, and told us to take the cards with guns pointed at us. We refused.*[2553]

Rising tension in northern Rakhine State

1134. After October 2016, the State Counsellor's Information Committee, State media, and other national media increased the focus on ARSA activities, with increased monitoring and reporting. The inflammatory nature of much of this reporting, often characterizing Rohingya as "Bengali terrorists", coupled with rising vitriolic discourse and hate speech against the Rohingya, fuelled an already volatile situation.[2554]

1135. These reports, which had regional and national prominence, contributed to a fear among non-Rohingya communities in Rakhine State of alleged terrorist activities. They deepened inter-communal suspicion and fear. They were likely a factor in a notable breakdown in the relationship between the communities, particularly in the weeks leading up to 25 August 2017.

1136. Between May and July 2017, media sources reported a number of alleged ARSA activities, including reports on the killing of Rohingya informants by ARSA,[2555] and an accidental explosion during a training course, killing seven individuals,[2556] including two

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[2543] CI-197, CI-198, ZI-001.

[2544] QI-058, V-076.

[2545] CI-185, CI-186, CI-191, LM-006, LM-012, K-155, V-067, V-076.

[2546] CI-186, CI-191, LM-006, V-067, V-076, K-155.

[2547] CI-177, CI-185, CI-186, CI-191, RI-001, LM-006, LM-012, LM-018, K-155, V-067, V-076.

[2548] CI-186, RI-004.

[2549] CI-185, CI-191.

[2550] LM-006, V-076.

[2551] QI-058, QI-060, QI-066, QI-067, WI-037, V-073.

[2552] QI-060.

[2553] QI-058; See this chapter, section D.1.a: Most serious incidents.

[2554] See chapter VI, section B.2: The issue of "hate speech": Findings.

[2555] *Global New Light of Myanmar*, "Rakhine slayings by insurgents" (22 July 2017).

[2556] V-094, V-216; Global New Light of Myanmar, "Five bodies unearthed near 5 May explosion site in Buthidaung" (16 May 2017).

"foreigners". The media also reported the discovery of alleged ARSA training camps in different locations, where materials for making explosives and other weapons were recovered, and ARSA members were killed.[2557] This reportedly prompted security forces to undertake violent evictions and arrests in the area, particularly around Tin May village tract, killing several people and prompting some families to flee to Bangladesh in May and June.[2558] On 22 June 2017, the State Counsellor's Information Committee released photos of an alleged ARSA terrorist training camp in the Mayu Mountain range and published pages of information about ARSA and its activities, including the alleged killing of informants.[2559]

1137. There were also public reports on killings by ARSA of members of non-Rohingya communities. On 24 June 2017, the Global New Light of Myanmar, a Government newspaper, reported that ARSA members had shot and killed two ethnic Rakhine villagers and injured two others, when they inadvertently discovered materials for explosives in Kyun Pauk Pyu Su village tract, Maungdaw Township.[2560] The Mission has not been able to verify responsibility for these killings, although credible reports indicate that they may have been perpetrated by ARSA.[2561] On 3 August 2017, the State Counsellor's Information Committee claimed ARSA was responsible for the killing of seven ethnic Mro, whose bodies were found near their village of Kine Gyi, Maungdaw Township. Some had been shot and others killed by machete.[2562] Credible but unconfirmed information suggests these killings were not connected to ARSA, but to unrelated criminal activity.[2563]

1138. Rohingya interviewees gave accounts of deteriorating relations between the communities throughout this period, with ethnic Rakhine neighbours ceasing to engage in business relations and instances of appropriation of Rohingya land.[2564] One interviewee said that ethnic Rakhine confiscated his land and fenced it with red flags, after which he no longer had access.[2565] Another interviewee was told by his neighbour that his farmland was "not his land", after which he was forced to live off his food stocks, which eventually depleted.[2566] Some Rohingya noted the breakdown immediately preceding the 25 August 2017 violence.[2567] For example, one interviewee reported that, by mid-August 2017, he was no longer able to sell goods to the ethnic Rakhine.[2568]

1139. The Mission also received reports where ethnic Rakhine neighbours actively issued warnings to their Rohingya neighbours about impending violence.[2569] For example, one interviewee from Zay Di Pyin, Rathedaung Township, said that he was warned by an ethnic Rakhine friend of his that:

> *You [Rohingya] cannot stay here and we cannot control the bad behaviour of our own people. The government is planning to drive away your people.*[2570]

[2557] *The Irrawaddy*, "Five Bodies Found in Buthidaung", (15 May 2017); Global New Light of Myanmar, "Terrorist training camps, guns uncovered in Mayu Mountains" (22 June 2017); Global New Light of Myanmar, "Tents of violent attackers discovered in Mayu Mountain" (1 August 2018).

[2558] V-094.

[2559] Global New Light of Myanmar, "Terrorist training camps, guns uncovered in Mayu Mountains" (22 June 2017).

[2560] V-067, V-152; Global New Light of Myanmar, "Four local ethnic people were attacked by swords and killed two" (26 June 2017).

[2561] See this chapter, section D.1.c: Arakan Rohingya Salvation Army.

[2562] Information Committee, "Press Release on the situation in Maungdaw" (Facebook Post, 11 August 2017), para. 4, https://www.facebook.com/InfomationCommittee/photos/pcb.778752418964533/778752095631232/?type=3&theater

[2563] See this chapter, section D.1.c: Arakan Rohingya Salvation Army.

[2564] LI-077, LI-114, QI-040, YI-005.

[2565] YI-005.

[2566] QI-040.

[2567] LI-065, LI-081, LI-114.

[2568] LI-114.

[2569] LI-033, LI-118.

[2570] LI-118.

1140. It is also of interest to note that, one to two days before 25 August 2017, a small group of up to 10 Hindu families left the Myin Hlut village tract in southern Maungdaw Township. They had lived in rented shops, including barbershops, but left their accommodation at short notice. One witness said that people had gone to the shops as usual, but had then discovered that the Hindu families had left.[2571]

1141. The Mission notes, that the breakdown of intercommunal relationships, as well as the warnings given by some ethnic Rakhine to their neighbours, and the departure of other groups in advance of the violence, may indicate that some non-Rohingya were informed of or aware of the upcoming plans of the Tatmadaw regarding the impending "clearance operations".

1142. In some locations, ethnic Rakhine village chairpersons, who were particularly aggressive towards the Rohingya, contributed to the further breakdown of relationships. For example, many accounts indicate that the relationship between the Rohingya and their ethnic Rakhine neighbours in Min Gyi (Tula Toli) had initially been amicable. Relations began to deteriorate when a new chairman was elected in 2015, and continued to worsen through 2017, including through severely restricted access to the market in a nearby village.[2572]

1143. During this period, the Myanmar authorities made increasing efforts to recruit ethnic Rakhine as members of the security apparatus. In November 2016, the Chief of the Rakhine State Police reportedly stated that his police force was recruiting a new "Regional Police" from among ethnic Rakhine and other non-Muslim ethnic minorities living in Maungdaw Township to serve in their own villages.[2573] It was reported that they intended to provide the recruits with weapons, other equipment, and compensation.[2574] On 17 November 2016, Myanmar police authorities officially reported that 116 new police members had started "special" four-month security training "to protect local people from various forms of crimes". Recruits would receive training in martial arts, weapon use, and riot control tactics. The announcement continued, "Every Rakhine national wishing to protect their state will have a chance to become part of the local armed police".[2575] This auxiliary police force, which would wear police uniforms, was to fall under the command of the BGP, which ultimately falls under control of the Tatmadaw during military operations.[2576]

1144. Moreover, the recruitment of non-Rohingya to Government-supported militias, known as Pyi Thu Sit ("People's Army"), continued throughout this period in Rakhine State.[2577] The Government appears to have supported the establishment of Pyi Thu Sit after the violence of 2012,[2578] and they were subsequently set up in specific village tracts in northern Rakhine State, armed by the Government and provided with uniforms and training.[2579] Often, Rohingya villagers could identify Pyi Thu Sit participants, either because they knew them, or because they were recognisable from some type of adapted military uniform distinguishing them from the Tatmadaw or police.[2580]

1145. Independent of Pyi Thu Sit, the Myanmar authorities also mobilised and armed other Rakhine militia groups after October 2016.[2581] One interviewee stated that these groups did not have uniforms.[2582] Another villager, a village administrator, stated that he saw weapons being transported by the Tatmadaw and handed out to ethnic Rakhine.[2583] The Government has confirmed the establishment of these "new" militias during a parliamentary debate in January 2018.[2584] The Deputy Minister for Home Affairs stated that, following the October 2016 violence, 34 more Rakhine community militia groups had been established in the Maungdaw-Buthidaung region, three of which were armed by the Tatmadaw and had been provided tactical weapons training up to an advanced level in February and March 2017.[2585] On 8 August 2017, the Rakhine State General Administrative Department issued an announcement referring to acts of "extremist terrorism" perpetrated by "Muslim Bengalis" that forced "local residents to flee their native homes". Significantly, the statement also referenced "a security system and cooperation among the public and particular security forces."[2586]

[2571] QI-111, QI-112.

[2572] QI-058, QI-059, QI-060, QI-066, QI-067.

[2573] V-153, V-154.

[2574] V-153.

[2575] The Republic of the Union of Myanmar Ministry of Information, "Police training aims to raise security in Rakhine State," (17 November 2016), http://www.moi.gov.mm/moi:eng/?q=news/18/11/2016/id-9208

[2576] V-165.

[2577] Constitution of Myanmar, s. 340, although this would require the approval of the National Defence and Security Council.

[2578] V-164.

[2579] LI-052, LI-101, LI-103, LI-104, LI-118, YI-009.

[2580] LI-052, LI-104, LI-118.

[2581] LI-054, LI-101, LI-103, YI-009.

1146. On 9 August 2017, a seven-member delegation from the Arakan National Party visited Senior-General Min Aung Hlaing, the Commander-in-Chief of the Tatmadaw, in Naypyidaw to discuss local concerns and to call for further heightened security measures in Rakhine State.[2587] The next day, the Rakhine State Government announced that the Tatmadaw would be carrying out an "area clearance operation" in the Mayu mountain range.[2588] According to a media source, the announcement was intended to alert ethnic Rakhine, so that they would avoid the mountains and not be mistaken as targets.[2589]

1147. Intercommunal relationships were likely further weakened by divisive rhetoric from Rakhine politicians, repeated calls for ethnic Rakhine to be armed to protect themselves, and the actual arming and training of some ethnic Rakhine.

1148. In some village tracts, new non-Rohingya people were brought into northern Rakhine State, including into NaTaLa villages, directly in advance of the clearance operations.[2590] It remains unclear who these people were, although some were believed to be Buddhists from Bangladesh.[2591] One interviewee from Kyauk Pan Du, southern Maungdaw Township, witnessed new people arriving in the nearby NaTaLa village for two to three months prior to August 2017. He said that there was a large group of youths who would stay for about a week and then leave and return later, and that he subsequently identified these people as participants in the "clearance operation".[2592] A number of other interviewees also informed the Mission that new arrivals to NaTaLa villages had been seen participating in the "clearance operations".[2593]

1149. In Gu Dar Pyin village, Buthidaung Township, villagers observed the arrivals of these new people in the week directly preceding 25 August. One Rohingya man observed:

> *Recently new people were brought to live in the NaTaLa. Our Rohingya villagers always had a good relationship with our Rakhine neighbours. Even after October 2016, the relationship was good. But then the new arrivals came, about one week before the violence. All the relationships broke down.*[2594]

[2582] YI-009.

[2583] LI-101.

[2584] "2nd Amyotha Hluttaw, 7th regular session, 9th day on 30 January 2018", meeting minutes, available at: https://bit.ly/2NaW1SQ

[2585] Ibid., See also Myoe Mint, "Deputy Minister Says Tatmadaw Arming, Training up to 30 Militias in Maungdaw" (The Irrawaddy, 30 January 2018).

[2586] Republic of Union of Myanmar, State Administrative Government, Rakhine State Announcement 1/2007 (8 August 2017).

[2587] V-229.

[2588] V-231.

[2589] http://thevoicemyanmar.com/news/10992-mrt

[2590] LI-054, LI-061, LI-063, LI-065, LI-066, LI-071, LI-110.

[2591] LI-054, LI-110, WI-048.

[2592] ZI-001.

[2593] LI-054, LI-061, LI-063, LI-065, LI-066, LI-071, LI-110.

[2594] LI-062.

Increased military build-up in northern Rakhine State after October 2016

1150. In the weeks prior to the 25 August ARSA attacks, there was a noticeable build-up of troops and other military assets across the three townships.[2595]

1151. On 10 August 2017, more than 1,600 members of the Tatmadaw's 33rd and 99th Light Infantry Divisions (LIDs) based outside Rakhine State, were airlifted to Rakhine State from their deployment in northern Myanmar. This re-deployment was reported in the national media; reference was made to the troops "going to northern Rakhine to carry out area clearance".[2596]

1152. Other military units were shifted from other military bases and attached to Military Operational Command (MOC)-15, whose area of responsibility covers Buthidaung Township. As many as nine battalions from other Western Regional Command units were attached to MOC-15, as well as one Armoured Brigade consisting of up to 60 tanks and armoured personnel carriers.[2597] Eight MI-17 helicopters were also relocated to Rakhine State.[2598] The deployment of tanks, heavy artillery and this number of helicopters was considered unusual.[2599]

1153. Furthermore, in the weeks just prior to 25 August 2017, Tatmadaw soldiers moved closer to the border areas, and the movement of helicopters into and out of BGP camps in Rakhine State increased. Areas that were normally guarded by BGP units now also had a significant presence of Tatmadaw soldiers.[2600] The arrival of new troops at the beginning of August was noticeable to villagers.[2601] Some new troops travelled in convoys of military vehicles.[2602] Some were garrisoned inside military and other security force compounds.[2603] One villager commented, "It was clear to us that there were new soldiers, as they had different uniforms to the soldiers who were permanently stationed inside the compounds, who we knew and recognised".[2604] In relation to the reputation of the LIDs, one interviewee stated the following:

> *New soldiers had come from Yangon and they were very tough. My Rakhine neighbour said to me, "Now you Rohingya are doomed because the government is sending military from Yangon who are coming here to kill every Muslim. Someday in Rakhine State there will be no Rohingya Muslims at all."*[2605]

1154. Deliveries of military equipment were made to the Tatmadaw and other security forces in advance of 25 August 2017.[2606] A villager with a shop next to a military camp explained:

> *Approximately four days before the [clearance operation] in my village there were many vehicles arriving to the base. Five trucks were full of troops, and the other two trucks were full of equipment. The trucks with equipment were full of white sacks. When the new arrivals got out of vehicles, they were handing out the things inside the sack. I saw that they were distributing "launchers".*[2607]

1155. In Maung Gyi Taung village tract, Buthidaung Township, what appears to be artillery was installed in the hills overlooking the village approximately one week prior to

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[2595] LI-071, QI-111, QI-112, QI-116, WM-003.

[2596] V-212, V-213.

[2597] K-002

[2598] K-002.

[2599] XM-005.

[2600] QM-001, XM-005.

[2601] LI-062, LI-081, LI-100, QI-069, QI-110, QI-111, QI-112.

[2602] LI-069, LI-081, LI-112

[2603] LI-081, QI-110, QI-116

[2604] LI-081.

[2605] LI-092.

[2606] LI-063, LI-081.

[2607] LI-081.

25 August 2017. It was used in the "clearance operation" a week later.[2608] A witness reported that when this weapon was fired, it made a loud sound and the subsequent explosion "destroyed" a paddy field.[2609]

1156. Approximately two weeks prior to 25 August 2017, two navy vessels, not normally seen in the area, were operating in the Bay of Bengal, in the area of southern Maungdaw and coastal Rathedaung Township.[2610] At least one of these vessels fired on a Rohingya village.[2611]

1157. This level of build-up, both in quantity and nature, would have required significant logistical planning over a considerable period. It would have required decisions at the most senior levels of the Tatmadaw. The Mission has concluded that this preparation, the joint nature of the operations,[2612] and the deployment of the LIDs indicate that the "clearance operations", or at least the ability to carry out a large and widespread operation, was planned and ordered well in advance of 25 August 2017.

Incidents in Rathedaung Township, July and August 2017

1158. A number of incidents took place in northern Rathedaung Township in July and August 2017 that contributed to the rapidly escalating tensions across Rakhine State. These were not isolated events but took place in close proximity to each other, in a series of neighbouring village tracts.

1159. These incidents were well publicized, reported on by Rakhine media[2613] as well as in national[2614] and international media.[2615] In a public statement, ARSA stated that these incidents were "pre-planned and organized crimes" which it viewed as being aimed at causing intercommunal violence in Rakhine State "to trigger a repeat of 2012-style violence".[2616]

[2608] LI-114, LI-117.

[2609] LI-117.

[2610] LI-045, LI-052, LI-053, LI-100, QI-113.

[2611] See this chapter, section D.1.a: Most serious incidents, for details on the "clearance operation" in Koe Tan Kauk.

[2612] Joint Operations are operations involving two or more of the military branches; Army, Navy and/or Air Force.

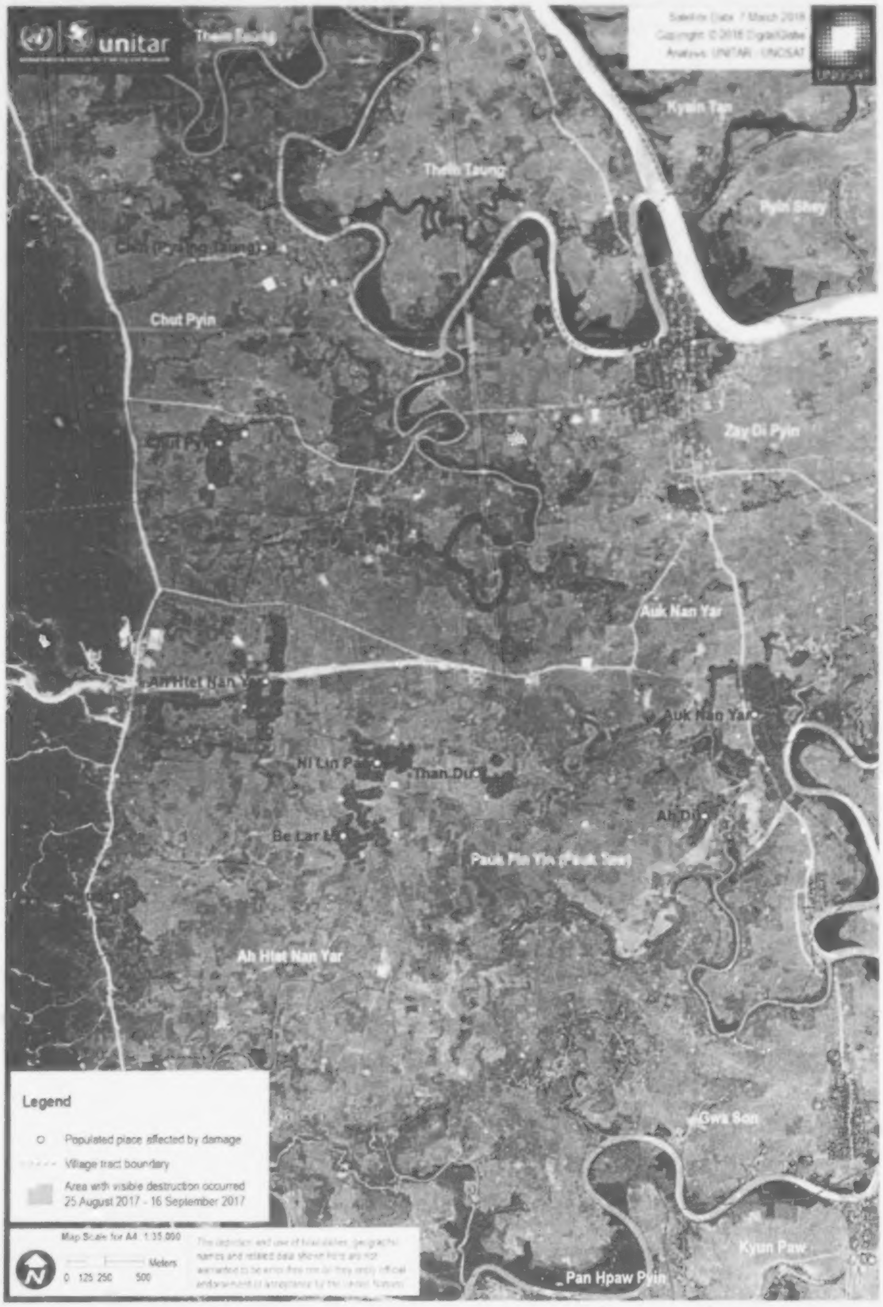
[2613] Narinjara, "Cows are still being stolen, killed and eaten, despite the increased security in Zay Di Pyin, Mayu coastal area" (Narinjara News, 13 August 2017): https://bit.ly/2xbYja9

[2614] For example, Global New Light on Myanmar, "Attack on police force arresting financial supporter of violent attackers in Yathedaung" (5 August 2017).

[2615] S. Naing, "Rohingya villagers blockaded amid fresh tensions in Myanmar's Rakhine – residents" (Reuters, 22 August 2017).

[2616] ARSA Statement, ARSA/PR/04/2017, on 6 August 2017.

Map of northern Rathedaung Township, which highlights the proximity of villages of Chut Pyin, Ah Htet Nan Yar, Auk Nan Yar and Zay Di Pyin and Chin (Pyaing Taung). The red marking indicates the subsequent burning of the villages in "clearance operations" detected by 16 September 2017.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Satellite Date: 7 March 2018
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Analysis: UNITAR - UNOSAT
UNOSAT
Thein Taung
Kyein Tan
Thein Taung
Pyin Shey
Chin (Pyaing Taung)
Chut Pyin
Chut Pyin
Zay Di Pyin
Auk Nan Yar
Ah Htet Nan Yar
Auk Nan Yar
Hi Lin Pa
Than Du
Ah Di
Be Lar
Pauk Pin Yin (Pauk Saw)
Ah Htet Nan Yar
Gwa Son
Kyun Paw
Pan Hpaw Pyin
Legend
○ Populated place affected by damage
- - - - Village tract boundary
▨ Area with visible destruction occurred 25 August 2017 - 16 September 2017
Map Scale for A4: 1:35,000
0 125 250 500 Meters
N

Visit of Ashin Wirathu to northern Rakhine State

1160. In May and July 2017, the monk Ashin Wirathu visited northern Rakhine State. In early May, Wirathu reportedly visited the locations of the 9 October 2016 attacks, among other villages, with an armed escort from the BGP.[2617] It was also reported that, as part of this trip, Wirathu had a private meeting with the Brigadier General of the BGP in Kyi Kan Pyin. At the end of this five-day trip, Wirathu was reportedly seen off by high-ranking military officials, including a colonel of the Western Command. The Arakan National Party (ANP) welcomed the visit publicly and reportedly made donations for his entourage.[2618]

1161. Wirathu returned to Rakhine State on 11 July 2017.[2619] He travelled from Sittwe to northern Rathedaung, where he visited both Zay Di Pyin and Chut Pyin village tracts. Both are majority ethnic Rakhine areas but with a significant Rohingya population, and both were locations of "clearance operations" encompassing serious human rights violations some weeks later.[2620] Wirathu first convened a meeting and delivered a sermon at the Zay Di Pyin monastery, reportedly attended by a large number of people,[2621] and travelled to nearby Chut Pyin the following day for a similar meeting.[2622] As one Rohingya man commented:

> *I myself saw Wirathu in Zay Di Pyin. When Wirathu came, all the villagers were welcoming him using their Buddhist flags. Rakhine villagers announced with a megaphone the arrival of the "Honourable Monk Wirathu". After the meeting, I also learned from some Rakhine friends that Wirathu was there.*[2623]

Given the incendiary nature of Wirathu's public statements towards Muslims and the Rohingya, this visit is likely to have heightened tensions in the area. A few days after the visit of Wirathu to Zay Di Pyin, the Rakhine village administrator reportedly called the Rohingya elders to a meeting. One person who attended was told: "This is not your land. This is not your country. Go away from here."[2624] Another villager in Chut Pyin noted that, after the visit, harassment of Rohingya villagers, by both Tatmadaw soldiers and ethnic Rakhine, increased.[2625]

Arrest, detention and torture of Rohingya from Chut Pyin

1162. On approximately 14 July 2017,[2626] a group of Tatmadaw soldiers and BGP entered the village of Chin (Pyaing Taung), Chut Pyin village tract, Rathedaung Township, in the middle of the night. They rounded up and arrested eight men. The men were severely beaten, handcuffed, tied up together to a metal chain and marched to the BGP base in Zay Di Pyin.[2627] For four or five days, the men were tortured, including through continuous beatings and burning of their genitals with candles.[2628] Four men were then released, following payment of a significant bribe by their village elders.[2629] The other four were reportedly sent to Sittwe prison to be charged with terrorism offences. There is no information about their whereabouts, charges laid against them or any judicial process.[2630]

[2617] V-223, V-224, V-225, V-226. See also Wirathu's own website noting his "West Gate Security Tour of May and July", https://www.eng.wirathu.com/2017/07/25/west-gate-security-trips-1/ (accessed August 2018).

[2618] V-227, V-228.

[2619] V-223, V-224.

[2620] CI-177, LI-129, QI-115, LM-012.

[2621] LI-129, QI-115, LM-012.

[2622] LI-129, LM-012.

[2623] LI-129.

[2624] LI-129.

[2625] CI-177.

[2626] V-067, V-218.

[2627] CI-186, CI-190, RI-005, RI-009, V-067.

[2628] CI-190, RI-009, V-067.

[2629] CI-186, CI-190, RI-009.

[2630] CI-186, CI-190.

Disappearance of Rakhine man from Chut Pyin and killing of three Rohingya

1163. On 29 July 2017, an ethnic Rakhine man from a village in Chut Pyin village tract went missing in the forest.[2631] The following day hundreds of ethnic Rakhine reportedly mobilised to search for him, armed with swords and sticks,[2632] and an armed ethnic Rakhine mob approached the Rohingya village in Ah Htet Nan Yar in apparent retaliation. Rohingya villagers prepared to defend themselves. The military and BGP intervened and controlled the situation.[2633] However, the bodies of three Rohingya, two men and a 15-year old boy, were found the next day in a stream.[2634] The Government stated that these were killings of Rohingya informants perpetrated by ARSA, although reports also indicate that these were revenge killings perpetrated by ethnic Rakhine in retaliation for the missing ethnic Rakhine man.[2635] After these incidents, Muslims were banned from Zay Di Pyin market,[2636] the main market for all surrounding villages, including Rohingya villages.[2637] These restrictions caused severe problems in terms of access to livelihoods and food security for surrounding Rohingya communities.

Zay Di Pyin blockade

1164. On or around 1 August 2017, a group of ethnic Rakhine, in the presence of the security forces, surrounded Kiyan Taung, a small Rohingya hamlet surrounded by Rakhine villages in Zay Di Pyin village tract. They installing a barbed wire fence around the village and poles at the entrances to it. This initiated an effective blockade of the hamlet, with the entrance to the village guarded by ethnic Rakhine and security forces.[2638] The ethnic Rakhine "sentries" were armed with traditional swords, iron rods, homemade rifles and slingshots, and threw stones at the Rohingya who were trapped inside.[2639]

1165. The fear of being attacked meant that, even within the besieged village, people were unable to leave their houses for fear of being injured. A villager explained:

> *We had to have our dinner before sunset because if they saw a light on, they would shoot stones towards that house. We could not use the toilet at night, because we would be shot at with a slingshot. Behind my house, there were many guava in the trees but we couldn't even pick one.*[2640]

1166. The blockaded Rohingya could not access fresh water, which they usually collected from the local water source outside the village.[2641] Although they collected some rainwater, one villager recalled, "There was no firewood to cook with, so at a certain point we had to eat raw rice".[2642] Reserves of food quickly diminished.[2643] Following complaints by the Rohingya to the security forces, at one point a small group of Rohingya men was escorted to a nearby village to replenish food stocks.[2644] The Rohingya were unable to tend to their cattle, many of which were stolen.[2645] Without access to medical treatment, people suffered from untreated illnesses.[2646]

[2631] CI-177, CI-199, QI-115, V-067, V-163; Global New Light of Myanmar, "Tents of violent attackers discovered in Mayu Mountain" (1 August 2017).

[2632] V-218, K-063.35.

[2633] CI-177, CI-199, K-063.35.

[2634] QI-115, V-163, K-063.35.

[2635] KI-002, LM-006, V-163.

[2636] K-063.35.

[2637] CI-177, CI-199, K-063.35.

[2638] CI-145, CI-178, LI-118, LI-129, QI-115, LM-006, V-068.

[2639] CI-145, CI-178, LI-129, QI-115.

[2640] LI-129.

[2641] CI-145, LI-129, V-163.

[2642] LI-118.

[2643] CI-145, LI-118, LI-129, QI-115.

[2644] QI-115, V-163.

[2645] CI-178, LI-118, LI-129.

[2646] CI-178, K-063.35.

1167. The blockade on Zay Di Pyin was reported by national[2647] and international media.[2648] On 16 August 2017, ARSA uploaded a video of its commander, Ata Ullah, flanked by armed fighters and warning the Myanmar military to demilitarise northern Rakhine State and end "abuses of Rohingya", specifically referring to the blockade in Zay Di Pyin.[2649]

1168. The blockade lasted approximately one month.[2650] On 25 August 2017, a meeting was announced by megaphone, asking all Buddhists to attend.[2651] After this, the mosque and a number of houses were burned.[2652] The following day, ethnic Rakhine armed with swords removed the fences[2653] and a "clearance operation" commenced in the village, perpetrated by Tatmadaw soldiers and police security forces, together with ethnic Rakhine.[2654] Many of the ethnic Rakhine who participated were recognised as being from the neighbouring villages.[2655] Security forces shot and fired "launchers" towards the village.[2656] Houses were also burned by ethnic Rakhine using matches and petrol.[2657] A family of five, including three children, was burned alive.[2658] Those who were able to flee crossed a river to escape to the neighbouring village tract, however, a number of persons including women and children, drowned whilst attempting to cross.[2659]

Incident in Auk Nan Yar

1169. On 4 August 2017, security forces[2660] entered the village of Auk Nan Yar and detained four men, reportedly on suspicion of being ARSA leaders.[2661] Rohingya men gathered, armed with sticks, protesting what they believed to be an arbitrary arrest. To disperse the protesters, security forces fired into the crowd. A number of people were shot and injured,[2662] with two reported to have sustained critical injuries.[2663] The BGP arrested a further five Rohingya villagers who were then held at a BGP post in Zay Di Pyin.[2664] It has been reported that, after nine days, one man was released. Credible sources who interviewed him indicated that he was tortured in a manner consistent with methods used at the same location on other detainees.[2665] The other detainees are believed to have been moved to Sittwe prison.[2666]

Abuse in Ah Htet Nan Yar

1170. Between 23 and 24 August 2017, Tatmadaw soldiers, reportedly including the 33rd LID, and the BGP carried out mass arrests in the Rohingya village of Ah Thet Nan Yaar village tract, Rathedaung Township, and the Pan Kain IDP Camp.[2667] Ethnic Rakhine, many of whom were recognizable to the Rohingya as coming from nearby Rakhine villages, were present.[2668] In the Pan Kain IDP Camp, the forces gathered villagers in a paddy field.[2669] The men and women were separated. Both groups were tied up, beaten, and their valuables stolen.[2670] Younger females were taken away,[2671] with one witness believing they were taken to the BGP base in a nearby Rakhine village.[2672] One mother said some months later that soldiers had taken away her daughter and that she was still missing:

[2647] V-219.

[2648] V-163.

[2649] XI-007, BM-025. "ARSA Commander Addresses Rohingya diaspora & the world; Warns Myanmar military", video available on YouTube: https://www.youtube.com/watch?v=NJoWeV1DIFM (accessed August 2018).

[2650] CI-145, CI-178, LI-118, QI-115, K-063.35.

[2651] LI-129, QI-115.

[2652] LI-118.

[2653] CI-145, LI-118, LI-129.

[2654] CI-145, LI-129, QI-115.

[2655] CI-145, LI-118.

[2656] CI-145, LI-129.

[2657] CI-145, LI-118, QI-115; Burning confirmed through satellite imagery analysis provided for the Mission by UNITAR-UNOSAT.

[2658] CI-145, LI-118, LM-006.

[2659] CI-145, QI-115, LI-118, LI-129.

[2660] CI-140, LI-033, K-063.35.

[2661] CI-140, V-220.

[2662] CI-140, LI-033, K-063.34, V-218, V-221.

[2663] K-063.34, K-063.35.

[2664] CI-140, LI-033, K-063.34, K-063.35, V-067.

[2665] V-067.

[2666] CI-140.

[2667] CI-199, LI-037, LI-038, LI-118, QI-033, LM-012, K-063.34.

> *I have not seen her since then and I fear that she has been raped, and worse may have happened. I am so worried about my daughter. I am tortured thinking about what might have happened to her.*[2673]

1171. Another woman, who also saw girls and young women being taken away, saw some return. They were in tears, with torn clothing,[2674] and they told her that the security forces had "done something bad" to them, but had been told not to talk about it.[2675] Based on established patterns of behaviour of the Tatmadaw, it is likely that some or all of these women and girls were subjected to rape, gang rape, or other forms of sexual violence, and some may have been killed.[2676]

1172. Over these two days, two large groups of more than 50 Rohingya men were beaten, tied up and taken away in military vehicles. When some resisted, the security forces fired shots, killing three Rohingya men.[2677] While some were released the same day, a large group were taken to the Zay Di Pyin BGP base,[2678] where they were tortured and ill-treated. One man was killed in detention.[2679] The village of Ah Thet Nan Yaar and the Pan Gain IDP Camp were subject to "clearance operations" on 28 August 2017, during which both locations were destroyed by fire.[2680]

Conclusion

1173. While purportedly to quash ARSA activity, the post-October 2016 period saw the Tatmadaw turn much of northern Rakhine State into a security zone. Oppression against the Rohingya intensified and daily life became untenable. In parallel, inflammatory reporting of the "Bengali terrorist" threat increased, strengthened by vitriolic State-sponsored hate speech and divisive rhetoric from Rakhine politicians and radical Buddhists. Fear was instilled amongst other ethnic communities, inter-communal relations weakened and local militias were strengthened. The weeks leading up to the 25 August 2017 saw multiple warning signs. There was a significant military build-up, with the deployment of LIDs, and a series of events in northern Rathedaung Township that further escalated tensions. An environment was created which both encouraged and enabled the ARSA attacks and the Tatmadaw "clearance operations". The human rights catastrophe of 2017 was planned, foreseeable and inevitable.

[2668] LI-037, LI-038, LI-040, QI-010, LM-012, K-063.34.

[2669] CI-199, LI-037, LI-038, LI-040, QI-031.

[2670] LI-037, LI-038, LI-040, K-063.34.

[2671] LI-037, LI-040, V-218.

[2672] LI-037.

[2673] LI-040.

[2674] LI-037.

[2675] LI-037.

[2676] See chapter VII, Hallmarks of Tatmadaw operations, section B: Sexual violence.

[2677] CI-199, LI-038, LI-040, QI-010, QI-031, LM-012, K-063.34.

[2678] CI-199, LI-038, QI-010, QI-031, K-063.34, V-067.

[2679] LI-038, V-067.

[2680] QI-031.

3. An enduring catastrophe

(a) Impact of the "clearance operations"

1174. By September 2018, over 725,000 Rohingya had crossed the border into Bangladesh as a consequence of the 2017 "clearance operations", joining those who had fled earlier.[2681] There are now over one million Rohingya living in the refugee camps. Bangladesh has played an important role, opening its borders and providing access to shelter, emergency assistance and protection. However, overall conditions in the camps are dire. The Rohingya are housed in temporary, inadequate shelters in densely populated camps, with no access to meaningful work, entirely dependent on humanitarian aid. Limited education opportunities for children and uncertainty about the future contribute to these difficulties. These factors increase vulnerability, in particular for women and girls, to trafficking and other exploitation.[2682] Notwithstanding the compassionate humanitarian response from Bangladesh, the camps there are not a sustainable or durable solution. Many Rohingya interviewees told the Mission that they wanted to return to Myanmar, albeit under conditions of security, justice and respect for their rights.[2683] One interviewee from Gu Dar Pyin, Buthidaung Township, told the Mission:

> *If the Government would accept us I would go back. I want the same rights as all other Myanmar citizens. I love my country so much. My father and mother are buried there. I have my paddy fields. Here in the camps it's difficult. I do not want to spend my life sitting in this camp. I want to work.*[2684]

1175. According to Myanmar media reports, 30,000 non-Rohingya civilians were also displaced by the violence within Rakhine State.[2685] By mid-September 2017, nearly 4,300 of them had reportedly returned to their homes.[2686] It appears that a major project is being implemented to resettle those non-Rohingya displaced persons in Rakhine State who have not yet returned, with construction of new villages and houses underway, intended for these affected communities.[2687] Details of some of this new construction, much of it on land previously inhabited by the Rohingya, are set out below.

(b) Legal framework

1176. The right of refugees to return to their country of origin is recognized in international law. Article 13(2) of the UDHR, for example, provides that "everyone has the right to leave any country, including his own, and to return to his country". The return of Rohingya to Myanmar must occur in full respect for the norms and standards of international human rights law and international refugee law. It must be in accordance with the key principles of voluntariness, dignity, and safety, and in line with the principle of *non-refoulement*.

[2681] Inter Sector Coordination Group, "Situation Report Rohingya Refugee Crisis", 5 September 2018, https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/iscg_situation_report_05_september_2018.pdf

[2682] E.g. International Organization for Migration, "Thousands at Risk of Trafficking Amid Rohingya Refugee Crisis" (Press Release, 31 July 2018).

[2683] BI-002, BI-014, BI-017, CI-002, CI-116, CI-118, CI-119, CI-133, CI-138, LI-065, LI-102, LI-103, LI-109, LI-110, LI-112, LI-122, LI-130, RI-011, RI-012, RI-013, RI-015. See also XChange, "Rohingya Repatriation Survey" (23 May 2018), http://xchange.org/rohingya-repatriation-survey, who undertook a quantitative study through 1,823 interviews with Rohingya in southern Bangladesh. Almost all respondents (99 per cent) said that they would go back only if certain conditions were met, with the majority mentioning citizenship of Myanmar with acknowledgement that they are Rohingya, freedom of movement and religion, and their rights and dignity restored.

[2684] LI-065.

[2685] Ministry of Information, "More than 4,200 IDPs from local ethnic villages return home" (13 September 2017), http://www.moi.gov.mm/moi:eng/?q=news/14/09/2017/id-11511

[2686] Ibid.

[2687] Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine State, "Nearly 800 houses under construction for displaced villagers in Maungtaw" (News Release, 6 December 2017), http://rakhine.unionenterprise.org/latest-news-en/235-nearly-800-houses-under-construction-for-displaced-villagers-in-maungtaw

1177. Accordingly, those displaced in and from Rakhine State should be able to return safely to their places of origin and participate in activities to rehabilitate and restore their homes and livelihoods. Importantly, a safe return for the displaced requires a guarantee that their human rights will be respected, protected and fulfilled. This includes the right to a nationality, but also the fundamental rights to life; liberty and security of person; not to be subjected to torture or cruel, inhuman or degrading treatment or punishment; and freedom of movement. It requires access to livelihood, education and health care. Underlying all these rights is the principle of non-discrimination.

1178. As will be discussed in detail in chapter VIII on accountability, victims of serious human rights violations also have the right to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanism. They have the right to truth and justice and to guarantees of non-recurrence.

1179. The Government of Myanmar is under an obligation to ensure the realization of these rights for the displaced Rohingya. To respect its duties under international law, the Government must facilitate their return. This includes the creation of conditions and the provision of means that allow them to return voluntarily, in safety and with dignity to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.[2688]

(c) Impossibility of return

1180. A series of factors provide a bleak outlook for the possibility of Rohingya refugees returning to Myanmar. The circumstances of Rohingya who have remained in Rakhine State since August 2017 are difficult, with widespread human rights violations still being perpetrated. This is exemplified by the fact that, as of August 2018, Rohingya have continued to leave Myanmar at an average rate of 1,733 a month throughout 2018.

1181. While the Myanmar Government has, in principle, committed to Rohingya repatriation,[2689] nothing thus far indicates this will be in a manner ensuring respect for human rights, essential for a safe, dignified and sustainable return. The repatriation procedure requires acceptance of National Verification Cards (NVCs) and processing in barbed-wired reception centres. The root causes of the exodus, including State-sanctioned oppression and an exclusionary and divisive rhetoric, are denied and continue unabated. The security forces who perpetrated gross human rights violations, with impunity, would be responsible for ensuring the security of returnees. Repatriation in such condition is inconceivable. As such, at the current time there is little or no realistic prospect of repatriation. OCHA[2690], UNHCR, [2691] and the ICRC[2692] have each publicly stated, in April and July 2018 respectively, that the conditions do not exist for returns to take place.

1182. On the contrary, Myanmar is making active efforts to prevent this return, through the consolidation of the destruction of Rohingya villages, through appropriation of vacated land and terrain clearance, erasing every trace of the Rohingya communities, and the construction on this land of houses for other ethnic groups. Other infrastructure projects appropriating Rohingya lands, including new roads and mines, are also underway.

[2688] See e.g. United Nations Guiding Principles on Internal Displacement (1998), principle 28.

[2689] Republic of the Union of Myanmar - Office of the President, (Press Release, 7 September 2018), http://www.president-office.gov.mm/en/?q=briefing-room/news/2018/09/07/id-8986

[2690] OCHA, "UN Deputy Humanitarian Chief: All people affected by humanitarian crises in Myanmar must get the assistance and protection they need" (End of Mission Statement, 8 April 2018); V-147

[2691] UNHCR, "Bangladesh and UNHCR agree on voluntary returns framework for when refugees decide conditions are right" (Press Release, 13 April 2018).

[2692] ICRC, "ICRC President Peter Maurer calls Bangladesh-Myanmar crises 'lose-lose situation for people'" (Statement, 3 July 2018).

An inadequate framework for repatriation

1183. On 23 November 2017, State Counsellor Daw Aung San Suu Kyi and Bangladesh's Foreign Minister Mahmood Ali agreed upon a framework for cooperation and repatriation of Rohingya.[2693] A joint working group on repatriation was formed, with initial indications of repatriations starting as of 23 January 2018. Myanmar was reported to have agreed to the repatriation of 1,500 Rohingya per week.[2694] At this rate, it would take more than 12 years to repatriate the Rohingya to their homes – and only once the repatriation begins, which it has not yet.

1184. Furthermore, the Myanmar Government has made repatriation of Rohingya refugees contingent on their verification as former residents of Myanmar and on their acceptance of NVCs. These conditions make returns difficult, if not impossible. The Rohingya have largely rejected acceptance of the NVCs, fearing that it would remove their right to remain in Myanmar. Moreover, the manner in which Rohingya left Myanmar meant that most no longer possess any documentation to prove former residency in Myanmar. Many interviewees informed the Mission that they were unable to bring any documentation when they fled. The Myanmar authorities have proof of identity and of residence for each Rohingya person resident in Rakhine State through their annual household registration process, but there is no information to suggest that these records have been made available to facilitate identification and repatriation.

1185. In June 2018, the Government of Myanmar, UNHCR and UNDP signed a Memorandum of Understanding (MoU) in relation to the repatriation process.[2695] The MoU was not developed in consultation with Rohingya refugees, as is required by UNHCR's Handbook on Voluntary Repatriation.[2696] As of September 2018, details of the MoU have not been made public and the Mission has not been afforded the opportunity to review its content. A leaked version circulating online suggests that some fundamental human rights issues may not be adequately addressed by the MOU, including the core issues of freedom of movement for the Rohingya beyond the borders of Rakhine State, and citizenship and statelessness.[2697]

1186. Between 17 and 23 January 2018, the Myanmar authorities[2698] published lists with the names, photos and identifying information of more than 1,300 men, women and children who they accused of being involved in, or associated with, terrorism-related acts in Rakhine State. The lists contain photos accompanied by captions with information variously including the name, age, village, alleged offence, and other identifying information. Most individuals are identified as "the terrorist" while others are characterized as a "family member of terrorists" or having "sympathized with the terrorist groups."[2699] The full detailed list, prepared by the BGP and reportedly submitted to the Bangladesh government, includes the names of more than 3,000 alleged ARSA "terrorists", "family members" and "sympathisers".[2700]

[2693] The Republic of the Union of Myanmar – Presidents Office, "Arrangement on Return of Displaced Persons from Rakhine State", Agreement signed by the Union Minister for the Office of State Counsellor of Myanmar, and the Foreign Minister of Bangladesh (News Release, 23 November 2017), http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-8028

[2694] BBC, "Rohingya crisis: Bangladesh and Myanmar agree repatriation timeframe" (16 January 2018); Z. Siddiqui "More Rohingya flee Myanmar as Bangladesh prepares to start repatriation" (Reuters, 18 January 2018); V. Milko, "The plan to repatriate Rohingya refugees leads to fears of new dangers" (Washington Post, 31 January 2018).

[2695] UNHCR, "UNHCR and UNDP sign a Memorandum of Understanding (MOU) with Myanmar to support the creation of conditions for the return of refugees from Bangladesh" (Press Release, 6 June 2018).

[2696] UNHCR, "Voluntary Repatriation: International Protection" (Handbook, 1996).

[2697] Memorandum of Understanding between the Ministry for Labour, Immigration and Population of the Government of the Republic of Myanmar and the United Nations Development Program and the Office of the United Nations High Commissioner for Refugees (Memorandum of Understanding, 30 May 2018), leaked version available at: https://www.scribd.com/document/382854287/The-MOU-between-Myanmar-Government-and-UNDP-and-UNHCR.

[2698] Lists were published in the English-language Global New Light of Myanmar newspaper, published by the Ministry of Information. Extracts were also published by the Office of the President of the Union, and by the Ministry of Foreign Affairs which on 16 January 2018 requested Bangladesh authorities to extradite "accused" persons to Myanmar.

1187. These lists were published without any form of due process and without offering any supporting evidence or information about any verification measures taken, putting the lives of both the individuals listed as "terrorists" and their families at risk. This will have served as a deterrent to repatriation.

1188. In February 2018, an initial list of over 8,000 Rohingya was submitted by the Bangladesh authorities to the Government of Myanmar for repatriation.[2701] At first, Myanmar's Ministry of Foreign Affairs announced that only 374 people listed qualified for repatriation, less than five per cent.[2702] On 18 May 2018, it then announced it would repatriate a total of 1,100 from the list.[2703] The Mission does not know if the persons on this list had indicated a wish to return to Myanmar voluntarily, and there are no indications that any have subsequently returned.

1189. Moreover, the Myanmar government has announced plans to temporarily house those Rohingya who they consider qualify for repatriation in "reception centres", before they are sent to one of 11 designated settlement areas. It is reported that the sites are undeveloped and returnees will have to build their own houses. The Government has also reportedly claimed to have arranged a "cash for work" programme for the returnees so they can use the income they earn to cover housing costs.[2704] In an address to a visiting delegation from the United Nations Security Council in Naypyidaw on 30 April 2017, the Commander-in-Chief, Senior-General Min Aung Hlaing, confirmed that Rohingya if repatriated would be sent to these specific sites. "There is no need to be worried about [the Bengali's] security if they stay in the areas designated for them."[2705]

1190. To date, the Myanmar Government has built two "reception centres" in Maungdaw Township and a "temporary medium camp" on former Rohingya-owned farmland,[2706] close to Rohingya villages destroyed in "clearance operations", where "accepted" Rohingya will reportedly be temporarily sheltered.[2707] The "reception centres" are surrounded by newly-constructed perimeter fences. Satellite imagery analysis shows one of the three sites, Aung Zay Ya, with buildings enclosed within a perimeter barbed wire fence. Increased security measures have also been observed around the transit centre, where a new perimeter fence has been built around a security post located approximately one kilometre to the east, near Thea Chaung Ywar Thit Kay village.[2708] The presence of BGP and Tatmadaw soldiers at both reception centres has also been reported,[2709] suggesting that freedom of movement will be restricted.

[2699] E.g. Global New Light of Myanmar, "Member of ARSA Terrorist Group: Photos and information of ARSA terrorists who involved in Maung Taw counter attacks on 25 August 2017" (18, 19 and 20 January 2018), supplement, A-P;; Republic of the Union of Myanmar – Presidents Office, "Names of more than 1,300 ARSA terrorists sent to Bangladesh" (17 January 2018), http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-8356

[2700] K-002.

[2701] V-161.

[2702] Global New Light of Myanmar, "Union officials explain cause for exodus, ARSA threats, repatriation obstruction" (15 March 2018).

[2703] Global New Light of Myanmar, "Myanmar Delegation attends the Second Joint Working Group Meeting on the Repatriation of Verified Displaced Persons from Bangladesh" (18 May 2018).

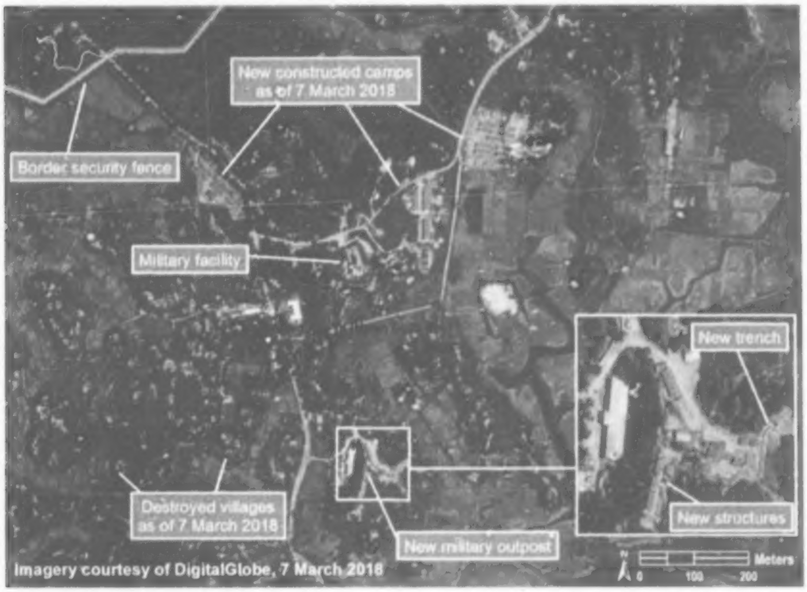
[2704] Sithu Aung Myint, "The Rohingya repatriation agreement and its many, many challenges" (Frontier Myanmar, 4 February 2018).

[2705] "Discussions between Senior-General Min Aung Hlaing and permanent envoys of UNSC" (Website post, 4 May 2018), https://www.seniorgeneralminaunghlaing.com.mm/en/6841/discussions-senior-general-min-aung-hlaing-permanent-envoys-unsc/

[2706] VI-067, VI-172. One "reception centre" is in Taung Pyo Let Yar village tract, two kilometres south of the Bangladesh border in Aung Zay Ya village, which was destroyed by fire during the "clearance operations". The new buildings are constructed next to hundreds of destroyed structures. The second "reception centre" is in Nga Khu Ya, in Nga Khu Ya village tract. The buildings are located predominantly on agricultural land, with satellite imagery showing that at least six nearby villages were destroyed by fire during the "clearance operations".

[2707] Republic of the Union of Myanmar – Presidents Office, "Repatriation Camps will be ready ontime" (Press Release, 14 January 2018), http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-8337

Image dated 7 March 2018 showing increased security measures around Aung Zay Ya reception centre. Nearby burned Rohingya villages are shown within the red lines.



Imagery courtesy of DigitalGlobe, 7 March 2018

1191. Returns in the current environment will result in further segregation and confinement of Rohingya into controlled camps that will likely mirror those of central Rakhine. The aftermath of the 2012 violence has seen the confinement of 132,000 Rohingya and Kaman in displacement camps and sites in central Rakhine State. Despite a desire to return to their home villages, they have not been allowed to leave these camps and sites for six years. The conditions of these camps have been described above, and amount to undue restrictions of freedom of movement as well as an arbitrary deprivation of their liberty.

1192. By September 2018, one year after the mass exodus of Rohingya started, the repatriation plan had not commenced. On 14 April 2018, Government sources reported that a Muslim family of five had returned voluntarily to Myanmar,[2710] been received at "Taung Pyo Latwei" and accepted NVCs. Credible sources have dismissed the announcement as a publicity stunt,[2711] with some claiming that the family were not even Rohingya refugees.[2712] Bangladesh and UNHCR acknowledged that the alleged repatriation was not undertaken in the context of the repatriation agreements. [2713]

[2708] Satellite imagery analysis prepared for the Mission by UNITAR-UNOSAT.

[2709] V-067.

[2710] Global New Light of Myanmar, "Displaced persons return to Taung Pyo Letwe reception centre" (16 April 2018).

[2711] V-173, V-236.

[2712] V-236.

[2713] V-175, V-236.

Lack of conditions conducive for return

1193. For the Rohingya who remain in northern Rakhine State, estimated in September 2018 to number between 200,000 and 240,000, circumstances remain extremely challenging, with the continuing perpetration of serious human rights violations against them.

1194. The Mission interviewed a significant number of Rohingya who remained in northern Rakhine State after the "clearance operations" from October 2017 until June 2018, and only later fled to Bangladesh. Largely from Buthidaung and Rathedaung Townships, the overall picture painted was one of extremely difficult conditions, and a significant deterioration of conditions in comparison with pre-August 2017.[2714]

1195. Interviewees reported a further tightening of restrictions on freedom of movement, viewed as confinement to their villages.[2715] In some locations, villagers reported being confined to their house compounds.[2716] These restrictions, which included an inability to access markets and livelihoods,[2717] led to a severe lack of food.[2718] This scarcity was compounded by restrictions on all humanitarian food aid to northern Rakhine State.[2719] These targeted actions to deny access to food appear to constitute a policy of forcing Rohingya to flee through food deprivation.[2720] As one Rohingya man who arrived in Bangladesh in February 2018 from his village in Nyaung Pin Gyi village tract, southern Rathedaung Township, stated:

> *The WFP did not deliver the rations for four months, and it was hard to feed the family every day. There were some reserves, but it was very difficult. There was sometimes only enough to eat once a day, and sometimes there was no food.*[2721]

1196. In remaining Rohingya villages, security forces have continued to engage in oppression. They have engaged in violent intimidation, sporadic violence, including beatings and killings, sexual and gender-based violence and property violations, including burning of properties and theft and extortion.[2722] The constant fear of violence from the security forces and uncertainty as to the future force many to flee. Of particular concern, many interviewees noted that Tatmadaw soldiers have continued the practice of coming into villages and violently rounding up men, arbitrarily detaining them and taking them away. Some of those detained have not been seen again.[2723] Some who were taken away were reportedly ill-treated or tortured.[2724] One man taken away in such a rounding up reported being tortured in detention, but eventually released on payment of a bribe.[2725]

1197. Security forces also continued to engage in sexual and gender-based violence, including the abduction and rape of Rohingya women, some of whom have not been seen again.[2726] One Rohingya man described how in late October 2017, one Tatmadaw soldier and one BGP officer entered his neighbour's house, tied up an elderly woman and raped the two younger women inside. As he explained:

[2714] CI-025, CI-100, CI-101, CI-102, CI-103, CI-107, CI-108, CI-151, LI-049, LI-051, LI-057, LI-058, LI-059, LI-060, LI-061, LI-077, LI-085, LI-086, LI-087, LI-088, LI-091, LI-092, QI-040, QI-064, QI-065, RI-014, RI-015, WI-014, WI-041, YI-004, YI-005, YI-012, YI-026, ZI-004.

[2715] LI-107, V-067.

[2716] LI-085, LI-088, LI-091.

[2717] CI-100, CI-102, LI-091, LI-092.

[2718] CI-100, CI-102, CI-103, CI-107, LI-057, LI-061, LI-085, LI-086, LI-092, QI-040, WI-014.

[2719] LI-092; See this chapter, section B.3: Restrictions on access to food, livelihoods, health care and education.

[2720] The Mission takes note that Amnesty International has called this a policy of forced starvation. Amnesty International, *We Will Destroy Everything*, pp. 101-103.

[2721] LI-092.

[2722] CI-100, CI-101, CI-102, CI-108, CI-151, LI-041, LI-057, LI-059, LI-077, LI-085, LI-086, LI-087, QI-040, WI-014, YI-026.

[2723] CI-100, CI-101, CI-102, CI-107, CI-108, CI-151, LI-059, LI-085, LI-086, LI-092, QI-040, V-067.

[2724] LI-057, LI-087.

[2725] LI-057.

[2726] CI-151, LI-057, LI-085, LI-091, LI-092, V-067.

> *The two women were screaming and crying that they were being raped. I could hear noises and that they were being slapped. The men stayed around two hours with the women and then they left. I saw the women afterwards. They were bleeding and they both had bite marks on their cheeks and their breasts had been stabbed. After that incident, I decided to leave for Bangladesh.*[2727]

1198. The Rohingya have no protection from vigilante attacks by ethnic Rakhine, which are also prevalent. These include violent attacks, continuing burnings, and theft of land, cattle and property.[2728] To the contrary, it appears that the Tatmadaw has facilitated the ethnic Rakhine to carry out attacks. One Rohingya man who fled his village in southern Buthidaung Township in February 2018 explained that, after August 2017, soldiers were regularly patrolling in his village, but more recently they had stopped coming. Instead, ethnic Rakhine were coming into the village and abusing Rohingya. He was told by the ethnic Rakhine chairman of his village tract that the Tatmadaw "have given us the responsibility to protect the country from Rohingya".[2729] Another Rohingya man saw his paddy fields taken by his Rakhine neighbours who said that they were told to do so by the Tatmadaw.[2730]

1199. The continuing destruction of Rohingya properties through fires has compounded the oppressive conditions in northern Rakhine State. 20 per cent of the total destruction occurred after 16 September 2017, a total of more than 7,000 structures, and destruction has continued until at least March 2018.[2731]

1200. Myanmar authorities have continued to pressurise Rohingya to accept NVCs or leave Myanmar in the period since the 25 August 2017 violence.[2732] One villager reported that some villagers took the NVC, issued by the authorities in February 2018, "to save their lives."[2733] Another villager from Kyaung Taung, Buthidaung Township, explained his experience:

> *The soldiers told us that they will leave us in peace, but that we must take the NVCs. We said that we would not take them. The soldiers said that, if we do not accept the NVCs, we must leave.*[2734]

1201. Since 25 August 2017, humanitarian access to vulnerable people in Maungdaw, Buthidaung and Rathedaung Townships has been severely curtailed for humanitarian actors, who have been prevented by the Myanmar authorities from providing assistance. A series of bureaucratic procedures are being used to limit access. Organizations that have received some level of approval have found that restrictions apply to significantly curtail their ability to operate effectively. Access restrictions have also led a number of humanitarian agencies to withdraw staff from Rakhine State. While some humanitarian agencies have been able to provide some assistance: as it has not been possible for any humanitarian needs assessment to be conducted, the actual circumstances of the Rohingya and other communities remaining in northern Rakhine State are not fully understood.[2735]

1202. Conditions have also been extremely difficult for a group of approximately 6,500 Rohingya who were displaced in northern Rakhine and who have subsequently settled in an area referred to as the "zero point" or "no man's land", between Bangladesh and Myanmar, adjacent to the Taung Pyo Let Yar area of northern Maungdaw Township. Although this area is outside Myanmar's border fence, it is Myanmar territory. Some Rohingya reportedly settled there with the hope that this may afford them a better right of return.

[2727] LI-057.

[2728] CI-100, LI-059, LI-087, LI-092, QI-040, QI-064, WI-041, YI-005, YI-026.

[2729] LI-092.

[2730] WI-041.

[2731] Satellite imagery analysis prepared for the Mission by UNITAR-UNOSAT.

[2732] CI-151, LI-057, QI-063, QI-116, WI-041.

[2733] CI-151.

[2734] LI-057.

[2735] K-069.

1203. This group has been subject to continuing threats, and instacnes of violence from the Myanmar authorities, and urged to go to Bangladesh. From approximately February 2018, the Tatmadaw used loudspeakers to broadcast negative abusive message to the Rohingya.[2736] The broadcasts including statements such as: "Leave, stateless Bengali"; "Motherfuckers, leave from here"; "You motherfucker, it is not your mother's land, you don't have any rights to this land".[2737] In March 2018, Myanmar troops reinforced their presence along this section of the border, and there were shots fired from the Myanmar side towards the Rohingya in the "zero point".[2738] Myanmar security forces also used slingshots to shoot hard stones across the border towards the Rohingya inside "zero point", [2739] with one young girl injured and taken for treatment in Bangladesh.[2740]

1204. There have been credible reports that a very small number of Rohingya have voluntarily returned to Myanmar to assess the conditions there for the possible return of others. They have been detained, charged and convicted with crimes of illegal border crossing.[2741] Information indicates that some men who voluntarily returned were arrested and ill-treated while in detention. They were reportedly convicted in absentia, imprisoned but subsequently pardoned. Upon their release, they were reportedly forced to accept the NVC and then taken to a securitized detention centre, where they were again threatened.[2742] Many managed to escape, or were permitted to escape, and to return to Bangladesh.

Use of landmines at the border

1205. Landmines were planted by Tatmadaw soldiers along border crossing points in northern Maungdaw Township.[2743] Soldiers were seen by witnesses laying mines in border areas in the period after 25 August 2017.[2744] Mines were planted, for example, on the Myanmar side of "zero point" between Bangladesh and Myanmar.[2745]

1206. A number of explosions in early September 2017 in this region caused deaths and serious permanent injuries to Rohingya, including children.[2746] Some of the explosions occurred when fleeing Rohingya stepped on landmines while crossing the land border into Bangladesh.[2747] Other injuries and fatalities were sustained by those trying to return to their villages from Bangladesh or "zero point" to recover possessions or bring remaining relatives with them.[2748]

1207. Two members of the same Rohingya family were casualties of mines in this border region. This family fled the "clearance operations", leaving behind one younger man to try to protect the family property. Eventually, he also fled the violence. As he crossed the border at Nga Yant Chaung village tract, in northern Maungdaw, he stepped on and detonated a landmine and was critically injured. Two of his brothers travelled from Bangladesh to assist him or recover his body. When they arrived, they found only remnants of his clothing at the site of the explosion. During this attempt to find him, one of the other brothers also stepped on a landmine and sustained severe injuries, losing a part of both legs and an arm, and being blinded in one eye.[2749]

[2736] LI-131.

[2737] CI-147, CI-148, LI-131, LI-132.

[2738] CI-147, CI-148, LI-132.

[2739] CI-147, CI-148, LI-131, LI-132.

[2740] CI-147, CI-148.

[2741] CI-147, V-190, V-189. Government of the Republic of Myanmar, State Counsellors Office "The First Returnee's in the camps in Cox's Bazaar arrived in Reception Centres" (Facebook post, 27 May 2018), https://www.facebook.com/state.counsellor/photos/pcb.1285956094871937/1285955904871956

[2742] Ibid.

[2743] CI-147, CI-148, LI-132, QM-001, XM-005, V-087, V-176.

[2744] CI-147, CI-148, LI-132, QM-001, XM-005, V-087, V-176.

[2745] CI-009, CI-147, CI-148, LI-132, WI-001, WI-002.

[2746] QM-001, WM-003, K-076.20, V-177, V-178, V-179.

[2747] V-067, V-087.

[2748] CI-009, CI-147, CI-148, LI-132, WI-001, WI-002.

1208. The Mission met with another young man who had been severely injured by a landmine, losing his left foot and the vision in his right eye, among other injuries. He had been sheltering in the "zero point" area following the "clearance operations" but had returned to Myanmar in an effort to recover some of his cattle. He stepped on the mine as he was returning to Myanmar.[2750] In a further incident, a middle-aged woman stepped on a landmine in the "zero point" area and lost both her legs.[2751] Although fleeing Rohingya constituted the majority of those injured by landmines, media reports suggest that others may have been affected, including two Bangladeshi nationals.[2752]

1209. Once the "clearance operations" began, the Tatmadaw faced no notable resistance from ARSA, nor any threat from across the Bangladesh border. This indicates that the use of landmines was intended to target fleeing Rohingya civilians and to prevent those who had already left from returning.

1210. On 6 September 2017, it was reported that Bangladesh filed a formal complaint with Myanmar regarding its use of mines.[2753] On 21 September 2017, Bangladesh Prime Minister Sheikh Hasina informed the United Nations General Assembly that:

> *We are horrified to see that the Myanmar authorities are laying landmines along their stretch of the border to prevent the Rohingya from returning to Myanmar.*[2754]

1211. Only five months earlier, in April 2017, it was reported that the Myanmar and Bangladesh governments had agreed to remove landmines and IEDs from the border area.[2755] By August, however, the Tatmadaw was laying landmines along the border, not removing them.

1212. Displaced Rohingya living in the "zero point" area in the months following 25 August 2017 managed to dig up some landmines with bamboo sticks.[2756] Photographs of the mines excavated by Rohingya, subsequently analysed, confirm that at least some of these are PMN-1 type, which Myanmar is known to produce and purchase and which the Tatmadaw is known to use.[2757] The severity of wounds observed is also consistent with the use of PMN-1 type landmines.[2758] It has been reported that the Tatmadaw has claimed that all mines in the region had been planted more than 20 years ago.[2759] However, this claim is difficult to reconcile with information that the Tatmadaw used anti-personnel landmines in its military operations in Rakhine State,[2760] and with first-hand accounts of the Tatmadaw planting the mines during the "clearance operations".

1213. Furthermore, the first mine explosion was reported in early September 2017, less than two weeks after the "clearance operations" had commenced, and after at least 400,000

[2749] WI-001, WI-002, V-180.

[2750] CI-009.

[2751] CI-148, LI-132.

[2752] S. Bashu Das "Bangladeshi among Rohingya refugees killed by landmines at Bandarban border," (*Dhaka Tribune*, 13 September 2017); Radio Free Asia: "Bangladesh: Landmine Kills Buddhist Trying to Enter Myanmar", (15 March 2018).

[2753] K.N. Dash, "Bangladesh protests over Myanmar's suspected landmine use near border," (Reuters, 6 September 2017.

[2754] Statement of H.E. Ms. Sheikh Hasina, Prime Minister of Bangladesh to the 72nd General Assembly, available at https://gadebate.un.org/en/72/bangladesh

[2755] V-183, V-201.

[2756] CI-148, V-067, V-087.

[2757] Landmine & Cluster Munition Monitor, Myanmar Burma: Mine Ban Policy, 16 November 2016, footnotes 40 & 42 (indicating Myanmar's acquisition and use of foreign-produced landmines including the PMN type landmine and the China Type-58, which is similar to the PMN, as well as the domestic production of what Myanmar calls the MM2, a copy of the China Type-58).

[2758] V-067.

[2759] K.N. Das, "Bangladesh Protests of Myanmar's Suspected Landmine Use Near Border" (Reuters, 6 September 2017).

[2760] V-067, V-184, V-185, V-186, V-187, V-188.

Rohingya had already crossed into Bangladesh, including by using the crossing points where landmine explosions were subsequently recorded.[2761] The locations where detonations occurred had been regularly used by Rohingya villagers prior to the 2017 "clearance operations",[2762] with no blasts or injuries reported.

1214. As such, the Mission has reasonable grounds to conclude that landmines were planted by the Tatmadaw, both in the border regions as well as within northern Rakhine State, as part of the "clearance operations" with the intended or foreseeable effect of injuring or killing Rohingya civilians fleeing to Bangladesh. Further, it seems likely that new anti-personnel mines were placed in border areas as part of a deliberate and planned strategy of dissuading Rohingya refugees from attempting to return to Myanmar.

Construction of the border fence

1215. The construction of a significantly more robust fence along the Bangladeshi border is a further indication of an official plan to prevent, or significantly control, the return of Rohingya refugees from Bangladesh. This strengthening of border fencing commenced in early September 2017, with the Commander-in-Chief, Min Aung Hlaing, making public statements confirming the construction at that time.[2763] Sharpened sticks have been placed in the ground, pointing in the direction from which refugees would be returning.[2764] As of March 2018, this new fencing has reportedly been completed along all but 60 kilometres of the border,[2765] following a February 2018 parliamentary approval of 15 million US dollars for this purpose.[2766] The new fence is being built by the Ministry of Home Affairs, which falls under the control of the Tatmadaw. The border area has reportedly been further fortified with additional troops and military posts.[2767]

(d) Terrain clearance and construction

1216. In December 2017, the Myanmar Government embarked on a major operation to remove and clear burned structures, with the use of heavy machinery, and build new infrastructure in their place. The Government said that this was in preparation for Rohingya returnees.[2768] Through this process, many Rohingya villages have been rendered unrecognisable, devoid of all structures, trees and vegetation. Authorities are building new security structures, developing new infrastructure projects and constructing new "model villages", predominantly, possibly exclusively, for non-Rohingya communities.[2769] Bangladeshi families are reportedly being invited by Myanmar to Rakhine State on the promise of land, citizenship, and free food.[2770] Rohingya who fled Myanmar in 2018 saw bulldozers and other types of land clearance.[2771] As one Rohingya woman who fled Myanmar in the mid-February 2018, from her village in southern Buthidaung, told the Mission:

[2761] QM-001.

[2762] BI-004, QM-001.

[2763] Global New Light of Myanmar, "Senior General meets locals in N-Rakhine, receives Japanese delegation in Nay Pyi Taw" (22 September 2017).

[2764] QM-001, XM-002, XM-006.

[2765] V-189.

[2766] V-207; Global New Light of Myanmar, "Pyidaungsu Hluttaw discusses housing, infrastructure loans" (23 May 2018); Meeting summary, 9th day of the 7th Regular Session, 2nd Pyidaungsu Hluttaw, Republic of Union of Myanmar (Official meeting notes, 22 February 2018). https://pyidaungsu.hluttaw.mm/uploads/pdf/okyLLx_9%20Day%20Meeting(22-2-2018).pdf

[2767] J. Emont, "Myanmar Blocks Rohingya Return With Fence, Barbed Wire and Land Mines" (Wall Street Journal, 20 March 2018).

[2768] V-191; see also Rebuttal Statement at the Interactive Dialogue on the Situation of Human Rights in Myanmar during 37th Session of Human Rights Council during which the Myanmar Ambassador stated, "In preparing facilities for the repatriation, bulldozing the ground is part of the process". http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-8555

[2769] Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine State, "Nearly 800 houses under construction for displaced villagers in Maungtaw" (News Release, 6 December 2017). http://rakhine.unionenterprise.org/latest-news-en/235-nearly-800-houses-under-construction-for-displaced-villagers-in-maungtaw

[2770] LM-016; Reuters, "Myanmar lures Bangladeshi Buddhists to take over Rohingya land" (2 April 2018); RFA, "Land, Citizenship Await Them in Myanmar, Bangladeshi Tribespeople Told" (24 April 2018).

> *While crossing Maungdaw, we did n[illegible] any trees and houses. All were removed. We saw the bulldozers. The Gover[illegible] clearing the land to erase the signs of their destruction.*[2772]

1217. The seizure of Rohingya land has been further entrenched through the purported application of laws that would further dispossess Rohingya. On 26 August 2017, the Union Minister for Social Welfare, Relief and Resettlement, Dr Win Myat Aye, stated that the "redevelopment of Maungdaw region" would be implemented according to the Natural Disaster Management Law (NDML):[2773]

> *There is a need to follow a law in managing the redevelopment works for terrorist acts that had occurred. In some places, it became a burnt land. According to the law, burnt lands become government-managed lands. The law that governs burnt land is national disaster management law.*[2774]

1218. Article 2 of the NDML defines natural disaster as the destruction of property, livelihood infrastructure, "… due to natural or man-made accidents or negligence such as fire … or violence and armed insurgencies."[2775] The National Natural Disaster Management Committee, formed by the Government to implement this law, is responsible for leading the implementation of projects for the "rehabilitation and reconstruction activities after the natural disaster".[2776] The law precludes criminal liability against responsible parties, such as the Government or the national disaster management committee, where disaster management "is done in good faith".[2777]

1219. In the view of the Mission, this is a misapplication of the law in the present context. The Tatmadaw is responsible for the intentional burning and destruction of Rohingya villages and property. Reference to this law in this context further demonstrates the failure of the Government of Myanmar to take responsibility for its actions, and further leads to the conclusion that a safe, voluntary and dignified return from Bangladesh is impossible.

[2771] CI-101, CI-102, CI-103, CI-107, CI-151.

[2772] CI-102.

[2773] Natural Disaster Management Law (Pyidaungsu Hluttaw Law No. 21, 2013).

[2774] Ministry of Information, "Redevelopment of Maungtaw region as per Disaster Management Law" (26 September 2017), www.moi.gov.mm/moi:eng/?q=news/27/09/2017/id-11604.

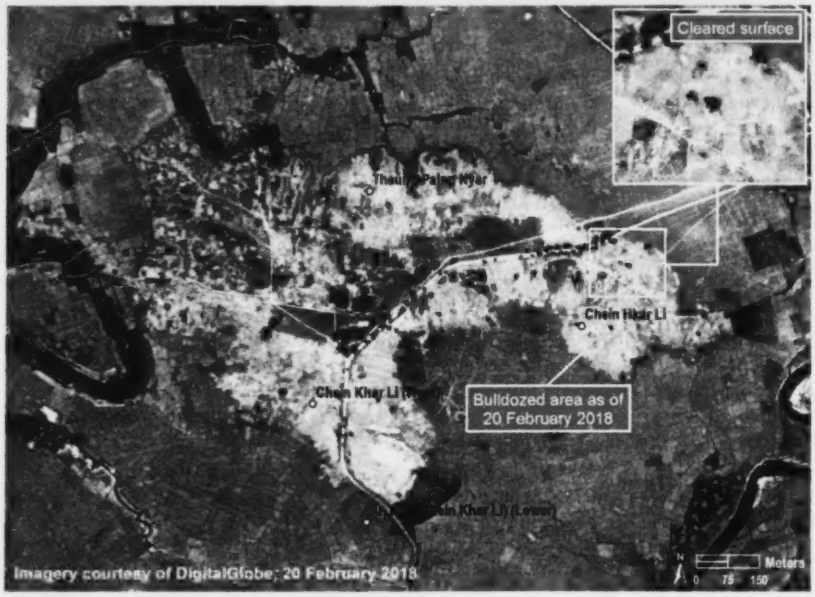
[2775] Natural Disaster Management Law, art 2.

[2776] Natural Disaster Management Law, art 5.

[2777] Natural Disaster Management Law, art 35.

Demolition and other forms of terrain clearance

Image of Chein Khar Li and Thaung Paing Nyar villages in southern Maungdaw, taken on 20 February 2018, showing extensive terrain clearance through bulldozing



Imagery courtesy of DigitalGlobe; 20 February 2018

1220. The Mission has analysed satellite imagery and aerial photographs showing large areas of cleared terrain across Maungdaw, Buthidaung and Rathedaung Townships, in villages where the Rohingya lived prior to the "clearance operations". Through this analysis, the Mission has identified at least 78 villages across the three townships which, by March 2018, presented signs of demolition or other forms of terrain clearance.[2778] Of these 78 villages, 50 were totally destroyed, and 28 partially destroyed, by fire during the "clearance operations".

1221. Terrain clearance was visible from November 2017 in Maungdaw town and in the Rohingya villages of Ho Kay Day Kone Nar and Zay Di in Kyauk Pan Du village tract, Maungdaw Township.[2779] It also took place in numerous villages in northern Maungdaw, mainly around Laung Don and Kyein Chaung village tracts, from late 2017 and intensified in January 2018 along the coast of southern Maungdaw. Terrain clearance was also visible during this period in seven villages in Rathedaung Township and two in Buthidaung Township, including in areas where the most serious incidents highlighted in this report took place.[2780] Terrain clearance activities across all three townships continued from January until at least March 2018.[2781]

[2778] Satellite imagery analysis prepared for the Mission by UNITAR-UNOSAT.

[2779] Ibid.

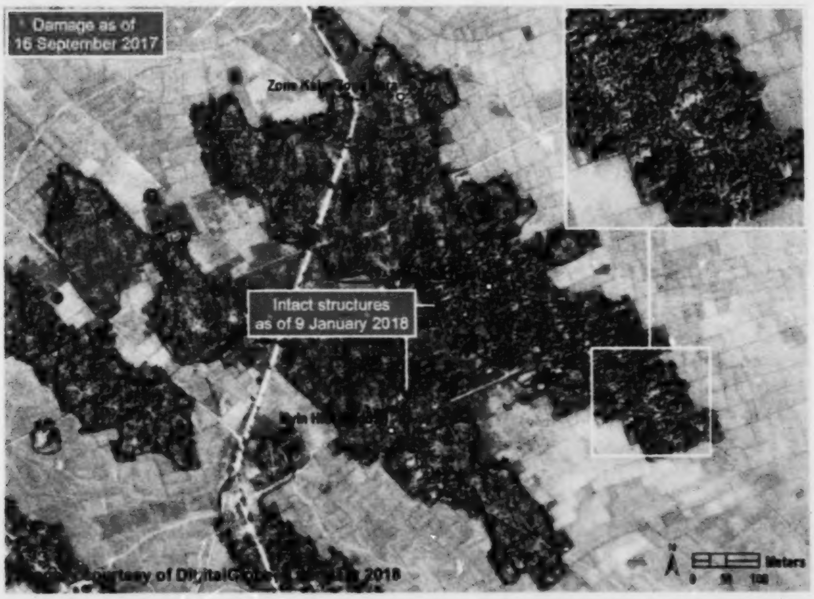
[2780] For example in Maung Nu (Buthidaung Township), Chut Pyin and Ah Htet Nan Yar (Rathedaung Township).

[2781] After March 2018, the availability of clear satellite imagery diminished due to the increased presence of thick haze and clouds. Nonetheless, a partially cloudy image collected on 9 April 2018 and analysed by the Mission showed new signs of scorching affecting trees, vegetation and houses in northern Maungdaw Township. The image shows 8 kilometres of damaged area from north-west to south-east, between the villages of Kyaung Toe (Bauk Shu Hpweit/Aung Zan village tract) and Mi Kyaung Chaung (Min Ga Lar Gi village tract). This is an area that was only slightly affected by destruction at the beginning of September 2017 and it is now completely destroyed.

1222. While this large-scale terrain clearance occurred predominantly in areas that had previously been burned, some structures that survived the earlier burning were also cleared. This pattern was observed in settlements in the village tracts Chein Khar Li, War Char, Gaw Du Thar Ra (Ywar Thit Kay), (Du) Chee Yar Tan, and Myin Hlut, all in Maungdaw Township.[2782]

1223. Satellite image analysis of Myin Hlut and Gaw Du Tha Ra village tracts, Maungdaw Township, shows widespread destruction through burning of structures by 16 September 2017. Further imagery analysis shows some structures remaining on 9 January 2018. However, terrain clearance has removed all structures and vegetation from both locations by 13 February 2018.[2783]

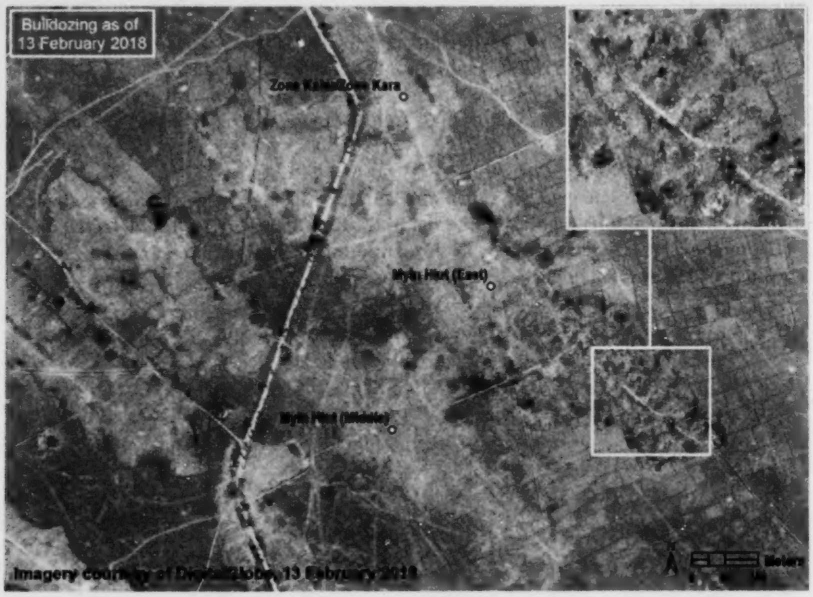
Image of Myin Hlut village tract, taken on 9 January 2018 showing the destruction of structures, through burning, inside the red lines. This damage was first detected on 16 September 2017. Structures outside of the red lines remained intact as of 9 January 2018, including in the magnified area.


Damage as of 16 September 2017
Intact structures as of 9 January 2018
Meters
0 50 100

[2782] Satellite imagery analysis prepared for the Mission by UNITAR-UNOSAT; V-067.

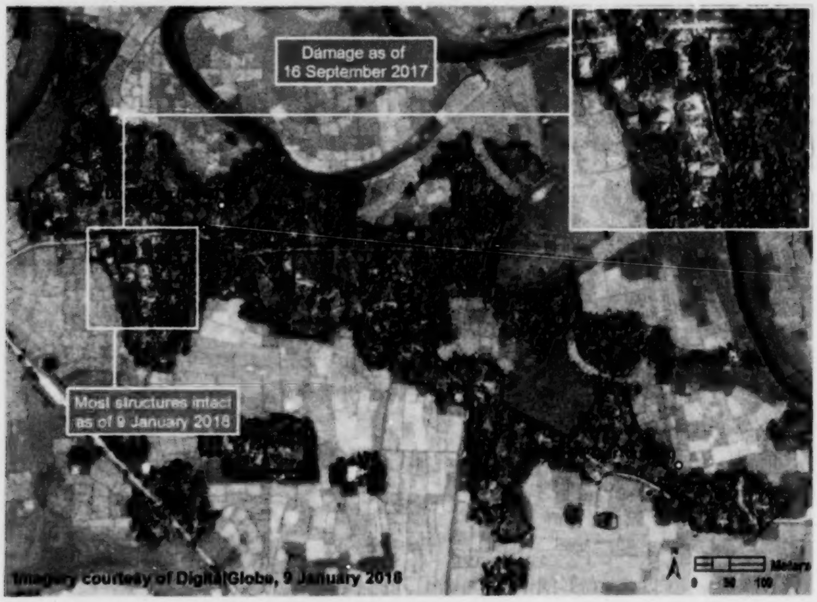
[2783] Satellite imagery analysis prepared for the Mission by UNITAR-UNOSAT; V-194, V-195.

Image of Myin Hlut village tract, taken on 13 February 2018, five weeks later, showing terrain clearance across the entire area removing all burned and intact structures, and vegetation, including in the magnified area. All signs of the village are erased.


Bulldozing as of
13 February 2018
Myin Hlut (East)
Myin Hlut (Middle)
Meters

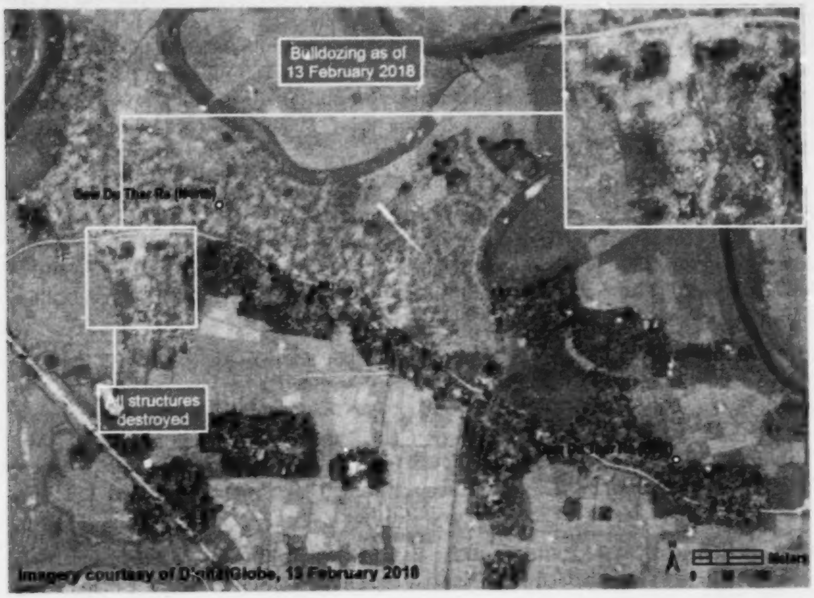
Imagery courtesy of DigitalGlobe, 13 February 2018

Image of Gaw Du Tha Ra village tract, taken on 9 January 2018 showing the destruction of structures, through burning, inside the red lines. This damage was first detected on 16 September 2017. Structures outside the red lines remained intact as of 9 January 2018, including most structures in the magnified area.


Damage as of
16 September 2017
Most structures intact
as of 9 January 2018
Meters
0
50
100

Imagery courtesy of DigitalGlobe, 9 January 2018

Image of Gaw Du Tha Ra village tract, taken on 13 February 2018, five weeks later, showing terrain clearance across the entire area removing all burned and intact structures, including in the magnified area. All signs of the village are erased.



Imagery courtesy of DigitalGlobe, 13 February 2018

New construction

1224. Terrain clearing has been followed by rapid construction and development of new buildings and infrastructure. The Mission analysed satellite images of 36 villages that show new construction, a majority in Maungdaw Township. In 23 villages, construction has taken place near destroyed or partially destroyed villages, mainly in the surrounding fields. In 13 villages, new structures have been constructed in areas burned during the "clearance operations" and subsequently cleared. Satellite imagery analysis indicates that the new construction is mostly security structures as well as new villages and houses, resettlement camps, and other type of civilian infrastructure.

New villages and houses

1225. On 6 December 2017, the Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine[2784] announced a plan for the construction of nearly 800 houses in approximately 26 villages in Maungdaw Township destroyed after 25 August 2017.[2785] On 11 January 2018, the Office of the President announced the commencement of these construction works, including "three repatriation and assessment camps", with a view to "accepting and resettling ethnic nationals, Hindus and Muslims" who were displaced by "terrorist activities".[2786]

[2784] The Union Enterprise for Humanitarian Assistance, Resettlement and Development (UEHRD) in Rakhine is a public-private enterprise with three stated goals: providing humanitarian assistance, carrying out resettlement and rehabilitation and working for development in Rakhine State. State Counsellor Daw Aung San Suu Kyi acts as Chairperson and Dr. Win Myat Aye the Union Minister for Social Welfare, Relief and Resettlement, acts as Vice Chairman. http://rakhine.unionenterprise.org/

[2785] Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine State, "Nearly 800 houses under construction for displaced villagers in Maungtaw" (News Release, 6 December 2017), http://rakhine.unionenterprise.org/latest-news-en/235-nearly-800-houses-under-construction-for-displaced-villagers-in-maungtaw.

1226. While satellite imagery analysis confirms that construction is continuing in the majority of these 26 locations, the Mission notes that the plan foresees the construction of only 22 houses, approximately three per cent of the total, for displaced Rohingya (referred to as "Bengali"). These 22 houses are being built in Ywa Thit village in Pan Taw Pyin village tract, which was almost totally destroyed by fire during the "clearance operations".[2787] The remaining 97 per cent of the nearly 800 houses listed in the plan are to be allocated to other ethnic communities.

1227. For instance, the original plan foresaw the construction of 73 houses for ethnic Rakhine in Min Gyi, the location of one of the largest and most egregious mass killings.[2788] On 14 May 2018, the authorities announced that this construction in Min Gyi would include more than 80 houses, a school and a monastery for "displaced ethnic people of Rakhine State".[2789] Rohingya are not considered as one of Myanmar's ethnic nationalities and so are not potential beneficiaries.

1228. As of 26 July 2018, satellite imagery analysis did not show signs of terrain clearance or reconstruction in Min Gyi village. However, the construction of a new "model village" is visible in the south of Min Gyi village tract, close to Kyet Kyein village in Done Paik village tract. It was further reported in the media that houses will be built in the "new" Min Gyi village which "has been relocated (beside the) Maungdaw-Taung Pyo road".[2790] As of June 2018, approximately 72 new structures were visible in this location (50 fully completed and foundations for the remaining structures).[2791]

1229. Building "new villages" close to the sites of previous Rohingya villages appears to be an attempt to change the demographic landscape of northern Rakhine State. Tin Maung Swe, Rakhine state secretary and a senior official with the military-controlled General Administration Department, has publicly stated that government departments, led by the Ministry of Home Affairs, would reclassify or re-zone land previously occupied by Rohingya villages, for purposes such as agriculture or forestry, with new villages being built close-by for settlers. He also said that returning refugees would not be entitled to return to their original villages.[2792] This cannot be reconciled with Principle 28 of the Guiding Principles to return "in safety and with dignity to their homes or places of habitual residence".

1230. Satellite imagery analysis has identified large-scale construction of organized permanent structures, which appear to be new "model villages", in nine locations:

- Pa Da Kar Taung (Net Chaung/Pa Da Kar Day War Nar Li village tract); Thit Tone Nar Gwa Son (Thit Tone Nar Gwa Son village tract); Du Than Dar (Than Dar village tract); Pa Da Kar Ywar Thit (Pa Da Kar Ywar Thit village tract); Kyet Kyein (Kyet Kyein village tract); Ah Htet Pyu Ma (Ah Htet Pyu Ma village tract); and Maungdaw town in Maungdaw Township;

[2786] The Republic of the Union of Myanmar – Presidents Office, "UEHRD leads preparation to receive displaced persons in Rakhine State" (11 January 2018), http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-8308

[2787] Satellite imagery analysis by UNITAR-UNOSAT for the Mission confirms the construction of likely 22 buildings in the northern part of the village, on ground cleared of the ruins of over 100 destroyed Rohingya homes.

[2788] See this chapter, section D.1.a: Most serious incidents.

[2789] The Republic of the Union of Myanmar – Presidents Office, "More than 80 houses built for ethnic people in Rakhine" (13 May 2018), http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-8761

[2790] V-196.

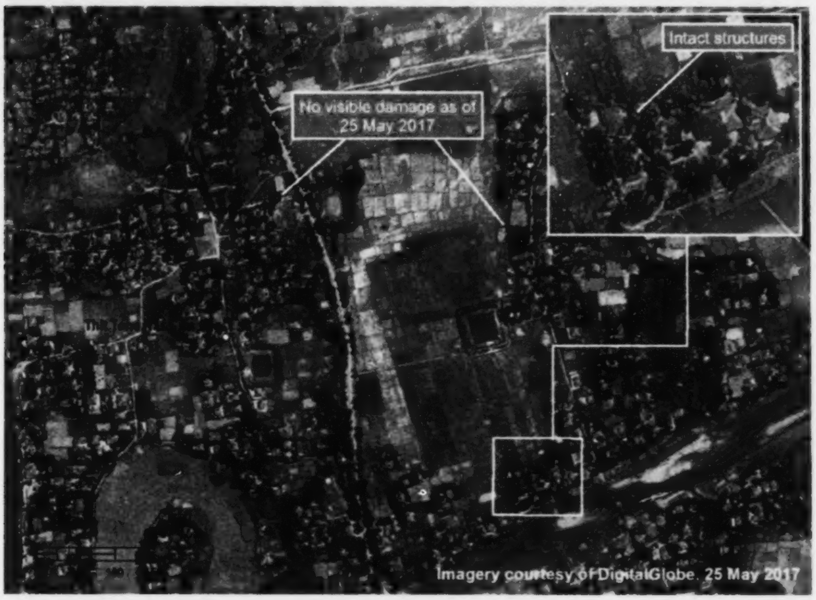
[2791] Satellite imagery analysis prepared for the Mission by UNITAR-UNOSAT.

[2792] V-198; see also The Republic of the Union of Myanmar – Ministry of Information, "Redevelopment of Maungtaw region as per Disaster Management Law 26 September 2017" (26 September 2017), www.moi.gov.mm/moi:eng/?q=news/27/09/2017/id-11604

- Yin Ma Zay (Nga Yant Chuang village tract) in Buthidaung Township; and
- Koe Tan Kauk in Rathedaung Township.

1231. The four images below are of Thit Tone Nar Gwa Son village tract in northern Maungdaw Township, the site of one of the new "model" villages. The images show the evolution of the area from 25 May 2017, prior to the "clearance operation", when there was no damage, to 13 February 2018, when there have been extensive terrain clearance and new construction of houses with metal roofs in an organized layout. Thit Tone Nar Gwa Son is one of the 26 locations in the Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine's house reconstruction plan mentioned above. The plan lists four ethnic Mro villages where 86 houses will be built "near Thittonena Gwa Sone village", in "Thittonena Gwa Sone" village tract.[2793]

Image of Thit Tone Nar Gwa Son dated 25 May 2017 showing no damage



No visible damage as of 25 May 2017

Intact structures

Imagery courtesy of DigitalGlobe. 25 May 2017

[2793] Information published by the Myanmar Government's Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine State lists the names of four new ethnic Mro villages where 86 houses will be built for 559 people, "near Thittonena Gwa Sone village", in "Thittonena Gwa Sone" village tract. See: http://rakhine.unionenterprise.org/latest-news-en/235-nearly-800-houses-under-construction-fordisplaced-villagers-in-maungtaw; Global New Light of Myanmar, "New homes for residents in Maungtaw, Rakhine State" (24 February 2018).

Image of Thit Tone Nar Gwa Son dated 16 September 2017 showing structures damaged by fire

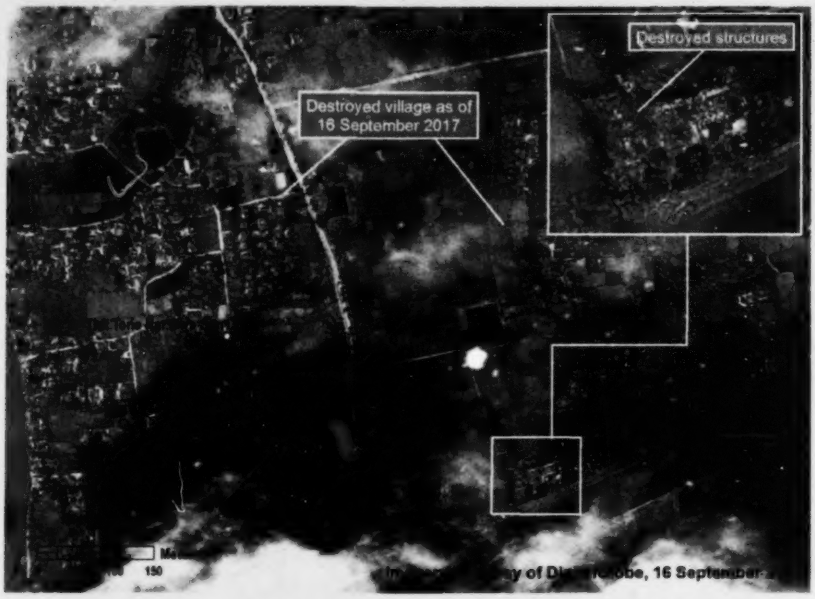

Destroyed structures
Destroyed village as of 16 September 2017
150
16 September

Image of Thit Tone Nar Gwa Son dated 16 December 2017: showing terrain clearance and new construction on previously burned land

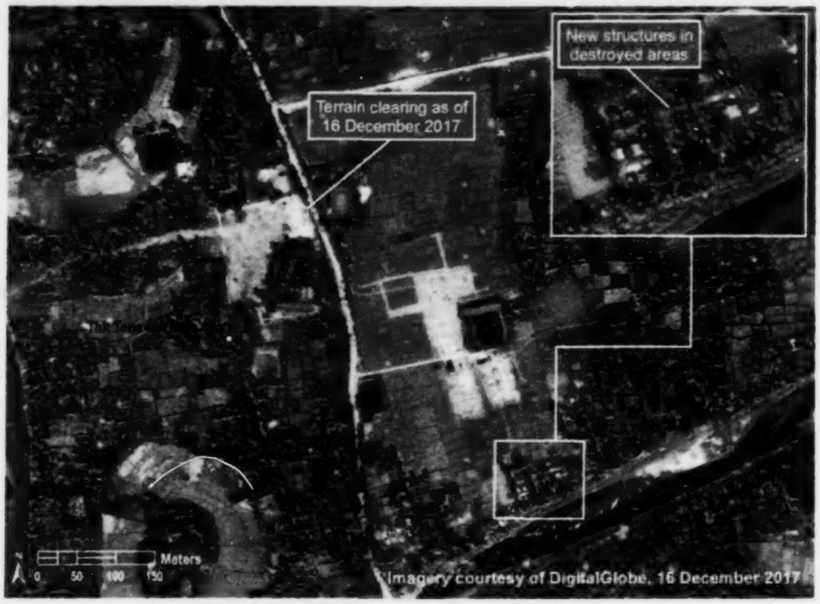
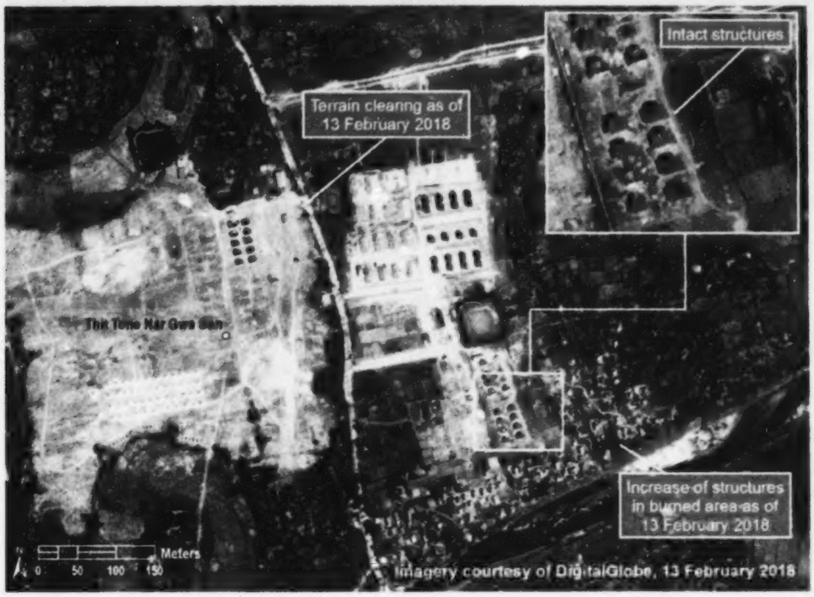

New structures in destroyed areas
Terrain clearing as of 16 December 2017
N
0 50 100 150 Meters
Imagery courtesy of DigitalGlobe, 16 December 2017

Image of Thit Tone Nar Gwa Son dated 13 February 2018 showing further extensive terrain clearance and additional new construction


Intact structures
Terrain clearing as of 13 February 2018
Thit Tone Nar Gwa Son
Increase of structures in burned area as of 13 February 2018
N
0 50 100 150 Meters

Imagery courtesy of DigitalGlobe, 13 February 2018

1232. Similarly, the four images below show the evolution of part of Pa Da Kar Ywar Thit village tract between 25 May 2017 and 13 February 2018, and the subsequent construction of new well-organized houses with metal roofs on the same previously damaged area. Pa Da Kar Ywar Thit (known in Rohingya as Diyal Toli) was burned during the "clearance operations" a few days before the events in Min Gyi. It used to be home to Rohingya and Mro communities.[2794] More than 600 structures were burned and destroyed.[2795] The Government's construction plan foresees the reconstruction of 140 houses in Pa Da Kar Ywar Thit, although only for displaced ethnic Mro.[2796]

[2794] See this chapter, section D.1.a: Most serious incidents.

[2795] Satellite imagery analysis prepared for the Mission by UNITAR-UNOSAT.

[2796] Information published by the Myanmar Government's Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine, dated 6 December 2017, lists the names of five new ethnic Mro villages where 132 houses will be built for 763 people, in "Padaka Ywathit group", in "Padaka Ywathit" village tract. See: http://rakhine.unionenterprise.org/latest-news-en/235-nearly-800-houses-under-construction-fordisplaced-villagers-in-maungtaw

Image of Pa Da Kar Ywar Thit dated 25 May 2017 showing no damage

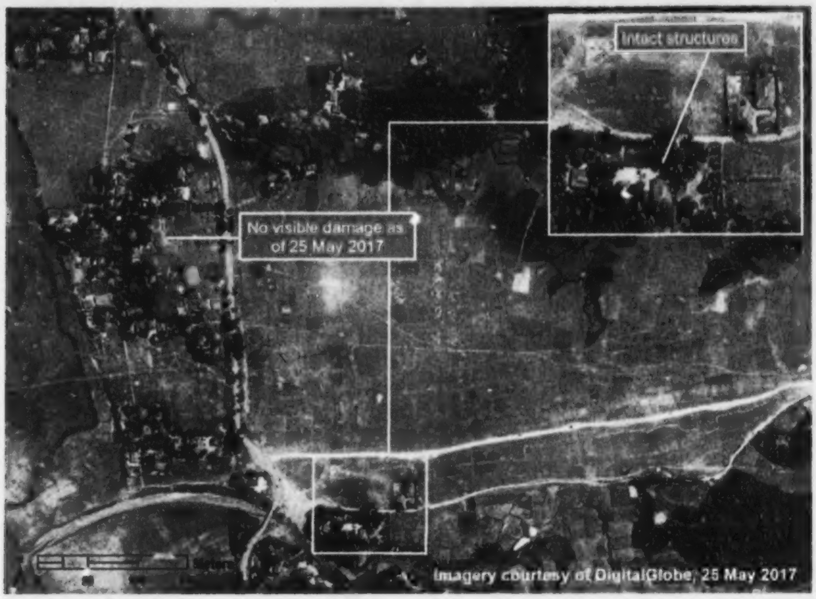

Intact structures
No visible damage as of 25 May 2017
Imagery courtesy of DigitalGlobe, 25 May 2017

Image of Pa Da Kar Ywar Thit dated 16 September 2017 showing structures damaged by fire

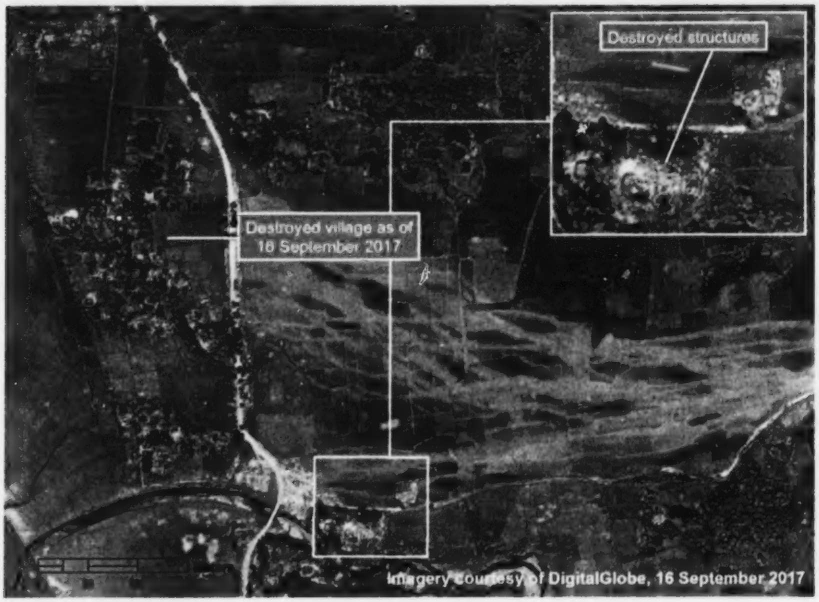
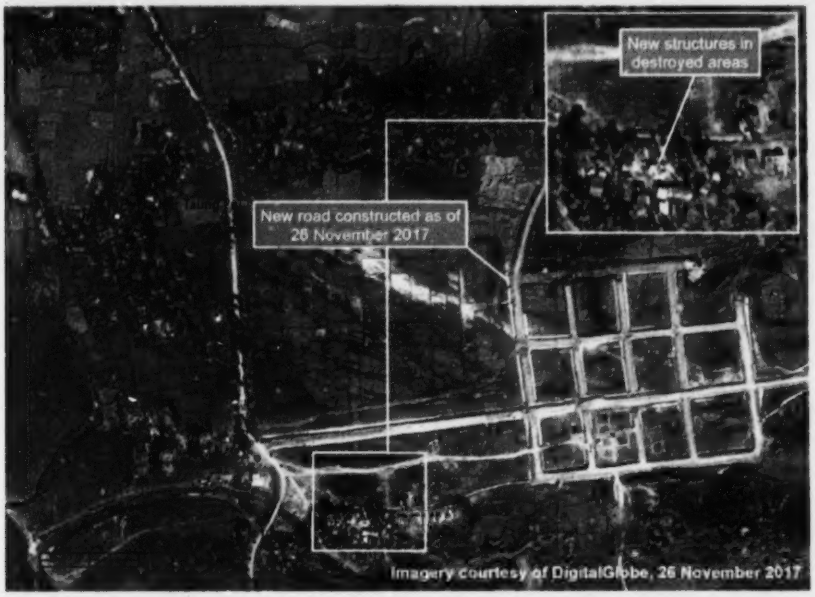
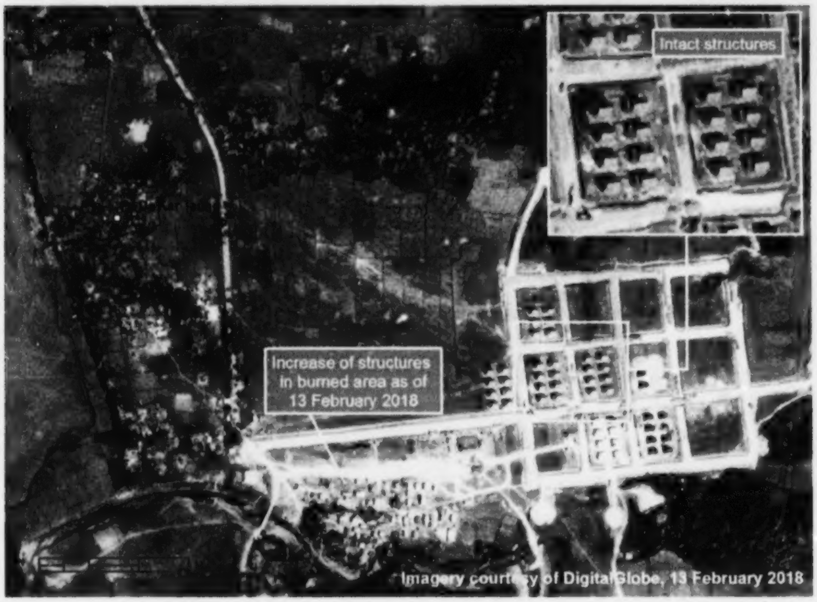

Destroyed structures
Destroyed village as of 16 September 2017
Imagery courtesy of DigitalGlobe, 16 September 2017

Image of Pa Da Kar Ywar Thit dated 26 November 2017 showing new construction, including road construction


New structures in destroyed areas
New road constructed as of 26 November 2017

Imagery courtesy of DigitalGlobe, 26 November 2017

Image of Pa Da Kar Ywar Thit dated 13 February 2018 showing extensive new construction


Intact structures
Increase of structures in burned area as of 13 February 2018

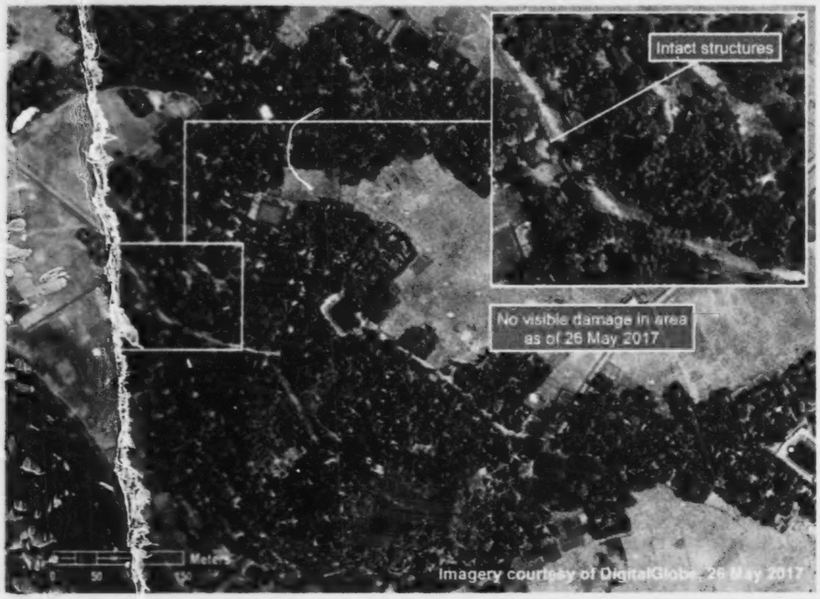
Imagery courtesy of DigitalGlobe, 13 February 2018

Security-related construction

1233. In other locations, satellite imagery indicates that new construction has a security or military purpose. Images show the construction of new security outposts and military bases, and the enlargement or reinforcement of previously existing security and military posts.

1234. Maung Nu village was burned over several days from 27 August 2017. The four images below show the evolution of Maung Nu from 25 May 2017 to 18 March 2018 and the construction of a new security or military facility. Satellite imagery analysis confirms the destruction of additional structures between 9 January and 18 March 2018. An open source report referred to the burning, by security forces, of 13 houses on the evening of 5 March 2018. The same report states that a new BGP post is being constructed to replace the BGP post attacked by ARSA on 25 August 2017 in Hpaung Taw Pyin.[2797]

Image of Maung Nu dated 26 May 2017 showing no damage


Intact structures
No visible damage in area as of 26 May 2017
0 50 100 Meters
Imagery courtesy of DigitalGlobe, 26 May 2017

[2797] V-197. See this chapter, section D.1.a: Most serious incidents, for details of the "clearance operation" in Maung Nu.

Image of Maung Nu dated 25 October 2017 showing structures damaged by fire, and an area prior to terrain clearance

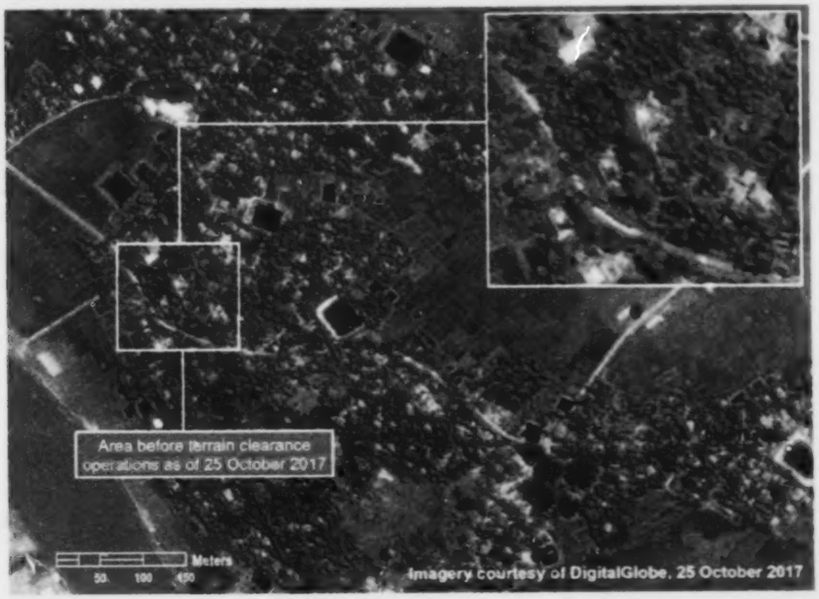

Area before terrain clearance operations as of 25 October 2017
Meters
50
100
150
Imagery courtesy of DigitalGlobe, 25 October 2017

Image of Maung Nu dated 9 January 2018 showing structures damaged by fire, and an area with terrain clearance, further damaged structures and on-going construction of a new military or security facility

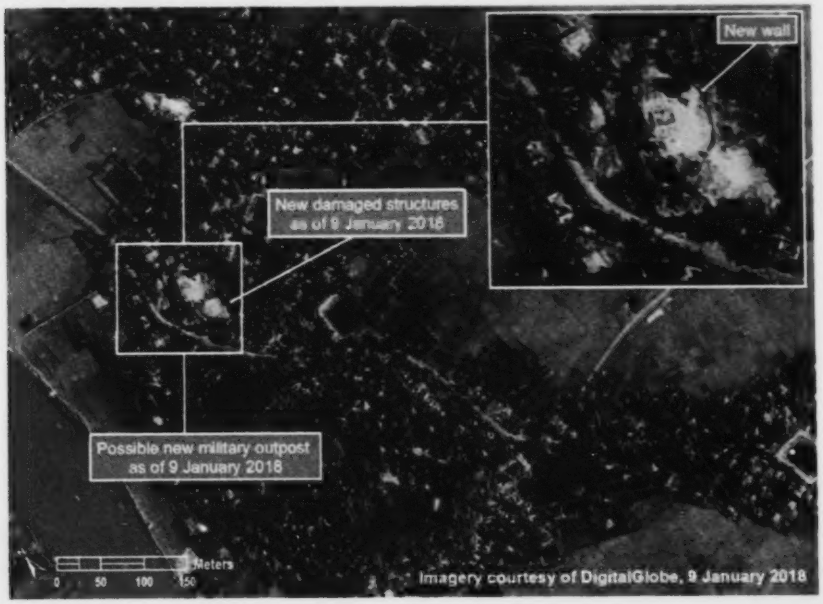
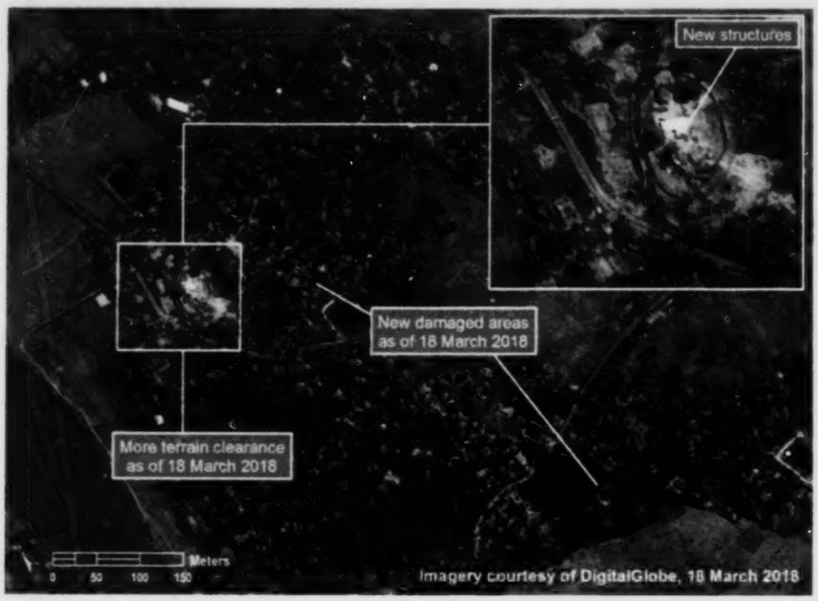

New wall
New damaged structures as of 9 January 2018
Possible new military outpost as of 9 January 2018
Meters
0
50
100
150
Imagery courtesy of DigitalGlobe, 9 January 2018

Image of Maung Nu taken on 18 March 2018 showing an additional 13 structures damaged by fire (red areas), further terrain clearance, and further construction of a new military or security facility

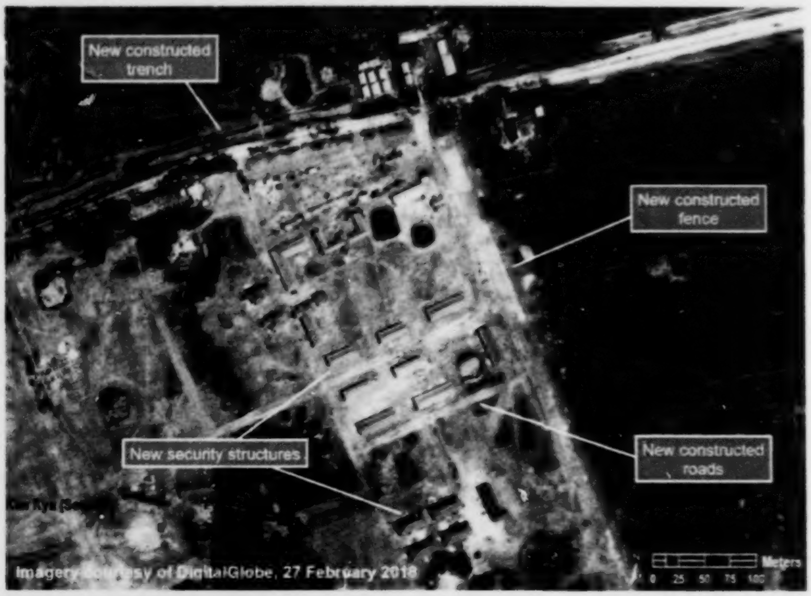

New structures
New damaged areas as of 18 March 2018
More terrain clearance as of 18 March 2018
Meters
0 50 100 150
Imagery courtesy of DigitalGlobe, 18 March 2018

1235. Satellite imagery analysis shows the presence of new structures surrounded by a perimeter fence in Kan Kya, Maungdaw Township. A similar pattern is observed in the southern part of Inn Din in southern Maungdaw,[2798] where satellite imagery analysis shows new large structures built on sites where Rohingya structures had previously been located. Credible reports indicate that construction activities in both locations are for new BGP bases.[2799]

[2798] Inn Din was the location of the only mass killing during the "clearance operations" that the Government has acknowledged. See this chapter, section D.1.a: Most serious incidents, for details of the "clearance operation" in Inn Din.

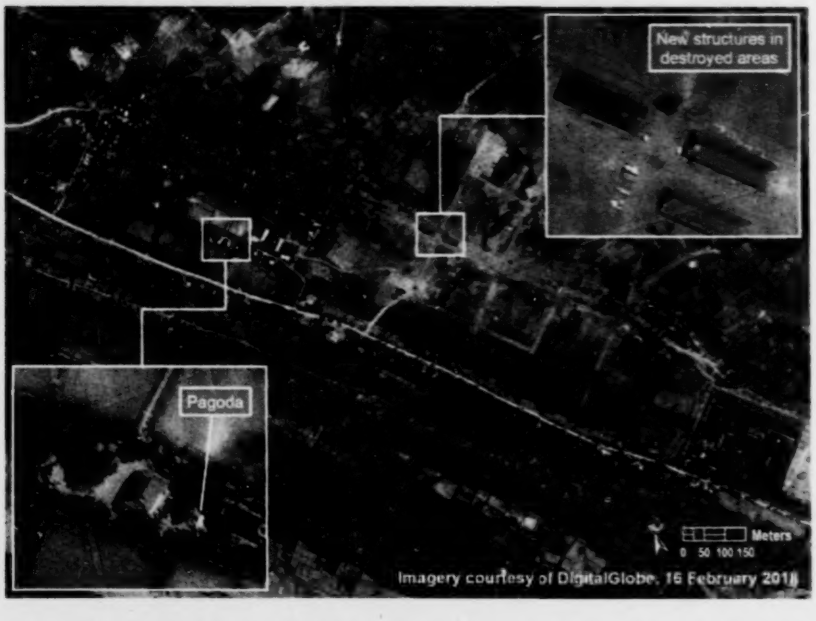
[2799] LM-019, V-067, V-192.

Image of Kan Kya taken on 27 February 2018 showing the construction of extensive new security structures and a perimeter fence.


New constructed trench
New constructed fence
New security structures
New constructed roads
Meters
0 25 50 75 100

Imagery courtesy of DigitalGlobe, 27 February 2018

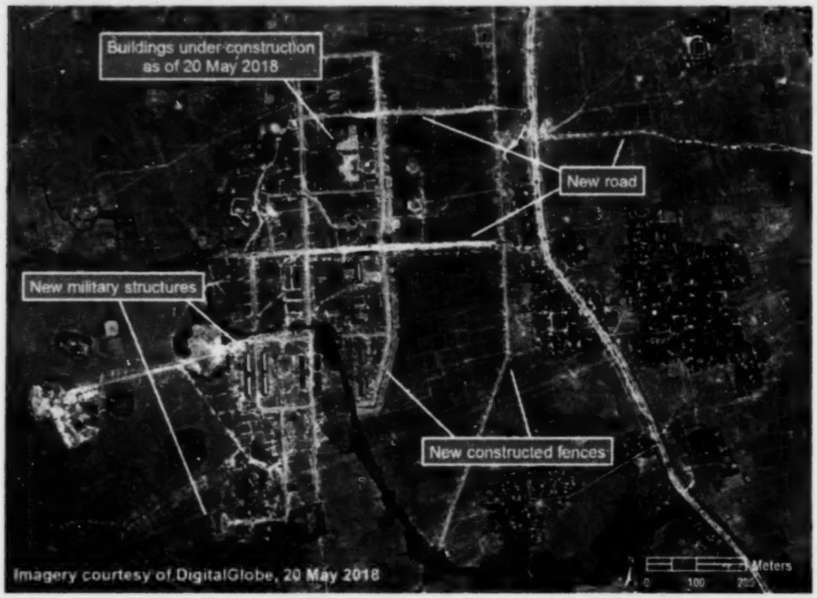
Image of Inn Din taken on 16 February 2018 showing new security structures constructed on land where Rohingya structures had previously stood, and the intact NaTaLa village to the west (with pagoda shown)


New structures in destroyed areas
Pagoda
Meters
0 50 100 150

Imagery courtesy of DigitalGlobe, 16 February 2018

1236. The Mission received reports that between January and February 2018 the Myanmar authorities confiscated hundreds of acres of Rohingya farmland in Ah Lel Chaung village tract, Buthidaung Township. According to the reports, this area had remained intact during the "clearance operations" and was still inhabited and used by Rohingya until the time of the land confiscation.[2800] Further reports indicate that the Rohingya were forced to leave the village as a consequence of subsequent terrain clearance and new constructions on their land.[2801] Satellite imagery analysis from March 2018 shows new construction near Let Thar village in Ah Lel Chaung. The image below shows new roads, large structures and a perimeter fence under construction, indicating the likely establishment of a new security force base.

Image of Let Thar village, Ah Lel Chaung village tract, below taken on 20 May 2018 showing terrain clearance, and extensive new construction of military structures on former Rohingya farmland

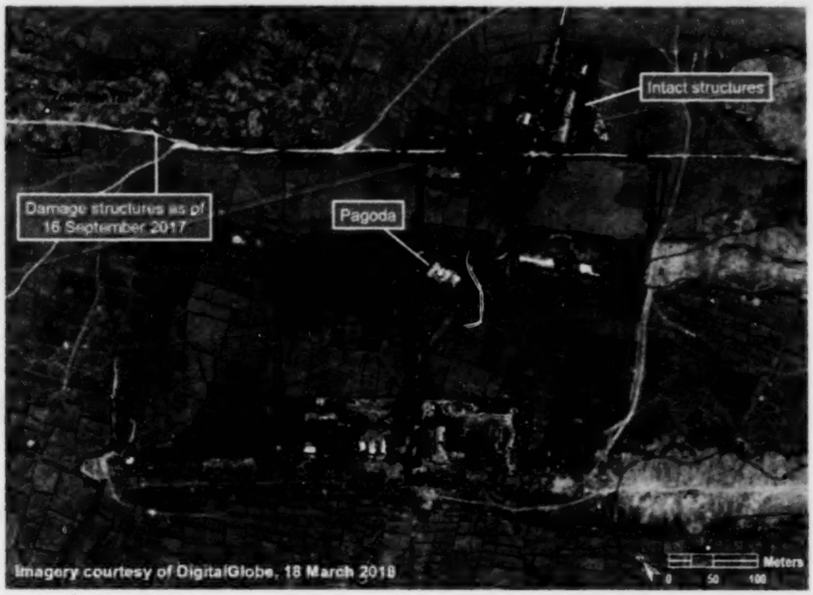

Buildings under construction as of 20 May 2018
New road
New military structures
New constructed fences
Imagery courtesy of DigitalGlobe, 20 May 2018
Meters
0
100
200

1237. Construction was also observed in pre-existing security facilities across the three townships. New secondary defensive fences, covering a larger perimeter, have been built around security facilities in Inn Din and Zay Di Pyin in Rathedaung Township. A similar pattern has been observed in two smaller security outposts in Maungdaw Township, and Ta Man Thar Bo Hmu Gyi, Ta Man Thar village tract, Buthidaung Township. Reinforcement measures, in the form of possible new fences or trenches within the limits of the compound, can be seen in the security facilities in Tha Pyay Taw, Tha Pyay Taw village tract, Maungdaw Township, and Pa!e Taung, Chin Tha Mar, Buthidaung Township.

[2800] V-199.

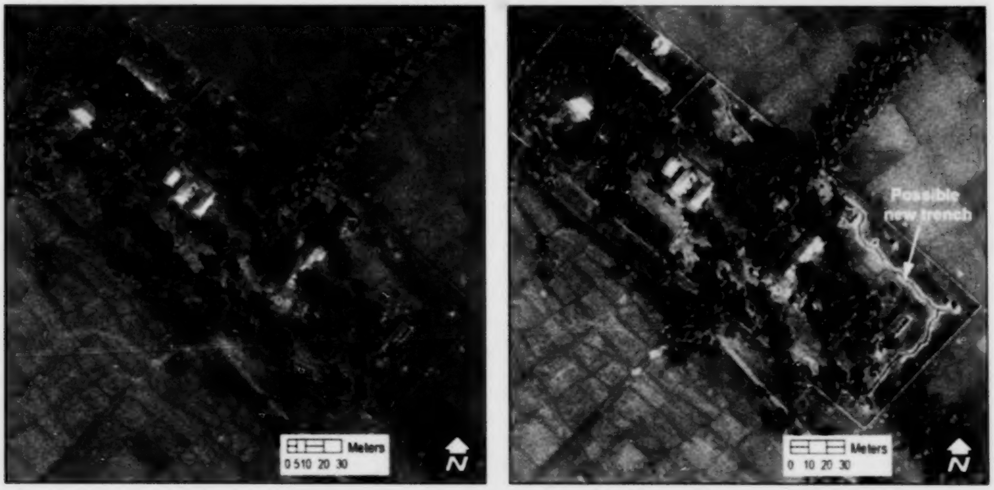
[2801] V-067, V-200.

Image of a security / military facility in Tha Pyay Taw, taken on 18 March 2018, showing a possible new trench constructed inside the compound

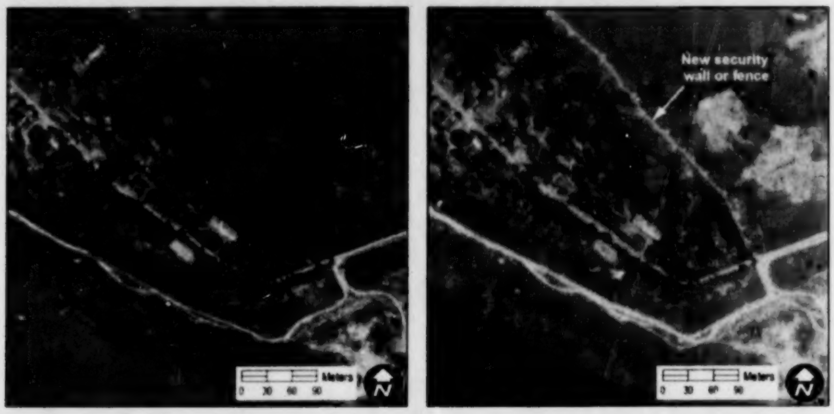

Intact structures
Damage structures as of 16 September 2017
Pagoda
Meters
0 50 100

Imagery courtesy of DigitalGlobe, 18 March 2018

Close-up images of the security facility in Tha Pyay Taw taken on 16 December 2017 (left), and 9 January 2018 (right), showing the presence of new reinforcements, possibly a trench.


Meters
0 5 10 20 30
N
Possible new trench
Meters
0 10 20 30
N

Close-up images of the security facility in Kyauk Hlay Kar village tract, Maungdaw, taken on 9 January 2018 (left) and 20 February 2018 (right), showing a possible new defensive wall constructed inside the compound



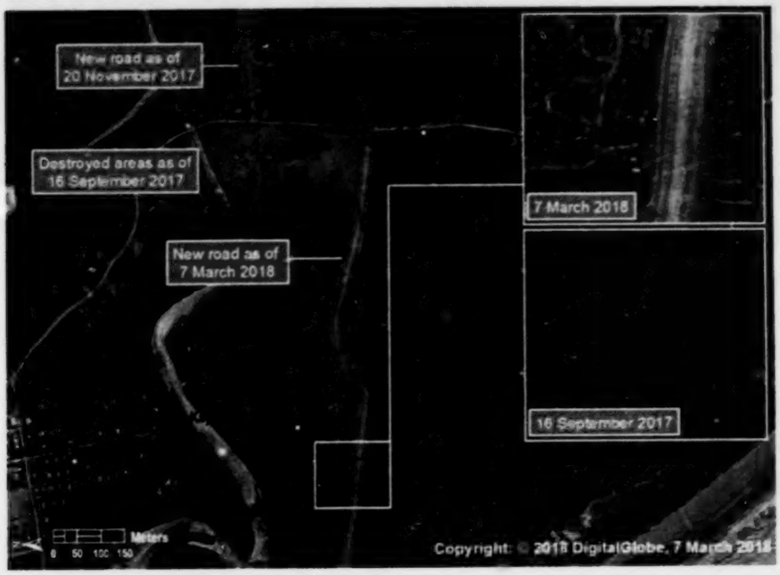
1238. In addition, at least six new large buildings have been built at the military bases in Let Wea Det Pyin Shey village tract, Buthidaung Township, and further expansion is visible in a security facility one kilometre west of Buthidaung town. Signs of expansion have also been detected in a small military camp in Yin Ma Zay, Buthidaung Township.

Construction of other infrastructure

1239. The Mission analysed images showing the construction of new roads across previously destroyed areas. Satellite imagery analysis and aerial photos of Kyauk Pan Du village tract, Maungdaw Township, from February and March 2018, indicate that, following the terrain clearance, a new road has been built across the burned villages of Ho Kay Day Kone Nar and Zay Di, and across land where Rohingya houses and compounds previously stood.[2802]

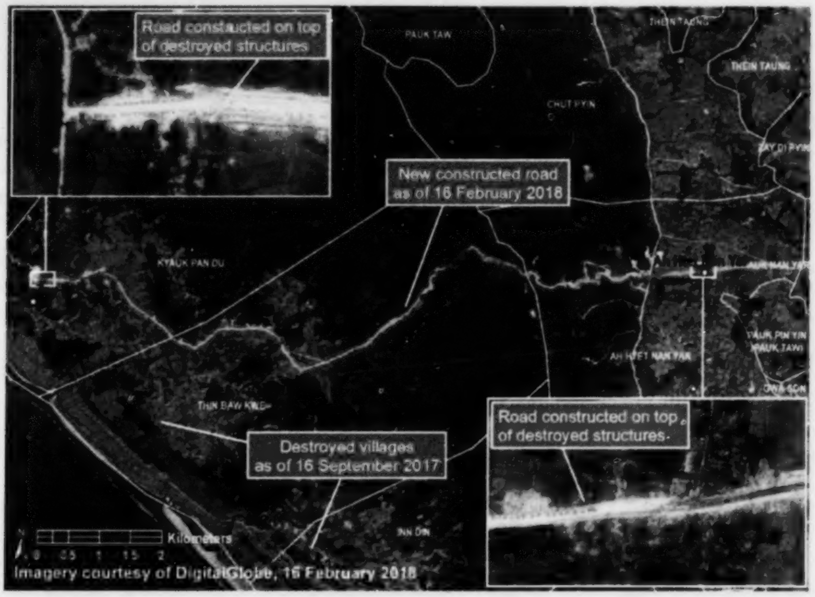
[2802] The first signs of terrain clearance were visible as early as November 2017 in Kyauk Pan Du; See this chapter, section D.1.a: Most serious incidents, for details of the "clearance operation" in Kyauk Pan Du.

Images taken in February and March 2018 showing new road construction in northern Rakhine State


New road as of 20 November 2017
Destroyed areas as of 16 September 2017
New road as of 7 March 2018
7 March 2018
16 September 2017
Meters
0 50 100 150

Copyright: © 2018 DigitalGlobe, 7 March 2018

1240. These roads have been built over areas of at least eight villages across the three townships (five in Maungdaw, two in Rathedaung and one in Buthidaung). Two large roads are being constructed across the May Yu mountain range, with one connecting the town of Goke Pi, Buthidaung Township, with Kyein Chaung, Maungdaw Township, where a large area of land has been cleared and appears to have been prepared for new construction. The second road connects Ah Htet Nan Yar in Rathedaung Township with Ho Kay Day Kone Nar in Maungdaw Township. The construction of new houses and terrain clearance is also visible in this latter location. In some instances, these new roads are constructed across previously destroyed villages, like in Ah Htet Nan Yar in Rathedaung Township and Zay Di in Maungdaw Township.


Road constructed on top of destroyed structures
PAUK TAW
THEIN TAUNG
THEIN TAUNG
CHUT PYIN
New constructed road as of 16 February 2018
KYAUK PAN DU
THIN BAW KWE
AH HTET NAN YAR
Destroyed villages as of 16 September 2017
Road constructed on top of destroyed structures
INN DIN
Kilometers
0 0.5 1 1.5 2
Imagery courtesy of DigitalGlobe, 16 February 2018

1241. Other new infrastructure in the area includes new telecommunications antennae and a new electricity or gas line between Rathedaung and southern Buthidaung Townships. New helipads built after the beginning of violence in northern Rakhine were observed in eight locations in Maungdaw and two locations in Buthidaung townships.

The destruction of evidence

1242. The mass demolition and terrain clearance throughout northern Rakhine State raise serious concerns about the potential destruction of evidence and its effect on future investigation into crimes, including the gravest crimes under international law.[2803] Many of these villages were the location of serious crimes, including Min Gyi, Myin Hlut, Kyauk Pan Du and Inn Din.

1243. Terrain clearance on this scale, without prior on site information gathering and investigation, will inevitably make it more difficult to locate crime scenes and burial sites, collect evidence for forensic analysis, and for investigators to piece together exactly what happened. The destruction of evidence also makes it more difficult for the Rohingya to bring legal claims. Moreover, the Rohingya have not been consulted, offered compensation for destroyed houses and seized lands, or given any indication they can rebuild their homes and livelihoods.

1244. This amounts to a deliberate and concerted attempt to obstruct justice. It is in violation of the State's obligation to undertake prompt, effective and thorough, independent and impartial investigations, with a view to ensuring the prosecution and adjudication of those responsible for crimes.[2804] Since it first became apparent that villages were being bulldozed and cleared, concerns have been raised. On 13 February 2018, in a meeting at the United Nations Security Council on the situation in Myanmar, the representatives of Bangladesh referred to "reports of the bulldozing and clearing of villages" and raised concerns that this will, "not only eliminate features of recognition to establish ownership rights, but would also seek to wipe out any remaining proof or evidence of alleged atrocities committed against the forcibly displaced people."[2805]

[2803] V-067, V-194.

[2804] See chapter X: Impunity and accountability.

[2805] S/PV.8179

4. Perpetrators

(a) Tatmadaw

1245. The "clearance operations" were led by the Tatmadaw. Tatmadaw soldiers were sighted in every "clearance operation" verified by the Mission. The Tatmadaw was in the lead throughout these attacks and bore greatest responsibility for violations perpetrated. They were responsible for the majority of killings, both indiscriminate and targeted, and were responsible for the incidents of mass killing and mass gang rapes. They were also responsible for other violations, including the widespread destruction of properties through fire, arbitrary arrests, enforced disappearances and the forced displacement of the Rohingya. Rohingya villagers had little difficulty in identifying the involvement of Tatmadaw soldiers, with clear recognition of their uniform and other identifying characteristics.

1246. The Mission has maintained a list of names of individual Tatmadaw officers and soldiers who participated in the "clearance operations", including in specific incidents of mass killing.

1247. The manner in which the Tatmadaw implemented the "clearance operations" required a significant amount of logistical planning. The joint nature of the operations, combined with the deployment of the LIDs, indicates pre-planning at the highest level.[2806] The issue of command responsibility is addressed in chapter IX below.

Western Regional Military Command

1248. Units of the Western Command, the Regional Command responsible for Rakhine State, were directly involved throughout the "clearance operations" in the perpetration of violations against the civilian population. Military units were shifted from other military bases and attached to Military Operational Command (MOC)-15, with Buthidaung as area of responsibility. It appears that as many as nine battalions from other Western Regional Command units were attached to MOC-15, as well as one armoured brigade consisting of up to 60 tanks and armoured personnel carriers.[2807]

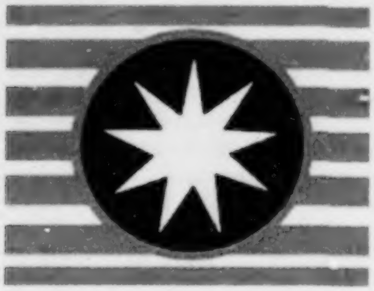
1249. Certain military bases of the Western Command were specifically involved in certain areas of the "clearance operations". Of note is the prominent role of troops from Light Infantry Battalion 564, which has a large base in Chin Tha Mar village tract, in the Maung Nu mass killing, as well as in "clearance operations" in the villages of the Taung Bazaar area of Buthidaung Township. The Mission also notes the role of Light Infantry Battalion 552, located in Nga Yant Chaung village tract, in the same "clearance operations" in the Taung Bazaar area. On 20 September 2017, Commander-in-Chief, Senior-General Min Aung Hlaing travelled to Rakhine State where he visited the troops of base 552.[2808]

[2806] Joint Operations are operations involving two or more of the military branches, Army, Navy and/or Air Force.

[2807] KI-002.

[2808] Website of Commander in Chief Min Aung Hlaing, "Gallant efforts to defend the HQ against terrorist attacks and brilliant efforts to restore regional peace, security are honoured" (21 September 2017), https://www.seniorgeneralminaunghlaing.com.mm/en/1346/gallant-efforts-to-defend-the-hq-against-terrorist-attacks-and-brilliant-efforts-to-restore-regional-peace-security-are-honoured/ (accessed September 2018).

The insignia of the Western Command

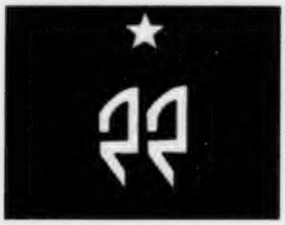


33rd and 99th Light Infantry Divisions (LIDs)

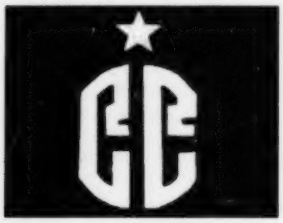
1250. On 11 August 2017, battalions of the Tatmadaw's 33rd and 99th LIDs, including more than 1,600 soldiers normally based outside Rakhine State, were airlifted into Rakhine State. From Sittwe, it was reported in the national media that these troops were going to northern Rakhine State to carry out "area clearance".[2809]

1251. The LIDs are considered the most battle-hardened and experienced units within the Tatmadaw. They are often deployed as the main strike force of an operation and directed for use in counter-insurgency operations against non-State armed groups. Allegations of serious human rights violations have been levelled against them, and in particular the 33rd and 99th LIDs, in the context of other operations, including in Kachin and Shan States.[2810]

The insignia of the 33rd LID



The insignia of the 99th LID



1252. Following the arrival of the LIDs in northern Rakhine State, during the two weeks prior to the commencement of the "clearance operations", there were numerous instances of violations being perpetrated by them, including theft, extortion and violent beatings, and even killings. Officers from the LIDs also actively participated in meetings in which Rohingya were threatened, which included death threats.

1253. During the "clearance operations", the LIDs played an instrumental role in some of the gravest mass killings verified by the Mission. It appears that 99th LID was predominantly operational in northern Maungdaw Township.[2811] In Min Gyi, the soldiers of the 99th LID played a central role in both the mass killings and gang rape of Rohingya villagers. It appears that the same soldiers may have been involved in the previous day's attack in Dial Toli, which also caused significant casualties. The 99th LID reportedly remained in Min Gyi until at least November 2017.[2812]

1254. After deployment to Rakhine State, the 33rd LID appears to have primarily operated in southern Maungdaw Township and Rathedaung Township. Facebook posts reveal their arrival in Rathedaung town around this time.[2813] The 33rd LID carried out mass killings in Chut Pyin, and credible reports indicate that they played a role in the clearance operations in Inn Din, and the series of clearance operations in Koe Tan Kauk village tract. Other information indicates that they may have also played a key role in a number of other "clearance operations" in southern Maungdaw Township.[2814] Photos published on the Commander-in-Chief's Facebook page showed the 33rd LID leaving Zay Di Pyin, Rathedaung Township, in January 2018.[2815]

[2809] E.g., The Irrawaddy, "Myanmar Army Deployed in Maungdaw" (11 August 2017).

[2810] V-133; also e.g. Amnesty International, *All the civilians suffer: Conflict, displacement and abuse in Northern Myanmar* (2017).

[2811] XM-008, V-067, V-239.

[2812] XM-008, V-239.

(b) Border Guard Police, Myanmar Police Force and Lon Htein

1255. The BGP played a role in the continuing oppression of Rohingya in the lead-up to August 2017, throughout the period after October 2016. The BGP gathered and arrested men, some of whom they tortured, including inside the BGP base in Zay Di Pyin, where sexualized torture was also perpetrated. BGP officers also engaged in extortion of Rohingya civilians on a considerable scale. During "clearance operations", the Tatmadaw were often accompanied by the BGP and committed crimes alongside them.

1256. Similarly, the Myanmar Police Force, which reports to the Ministry of Home Affairs, played an active role in the "clearance operations". In Inn Din, police were responsible for, at a minimum, the extrajudicial killing of 10 men. Police officers were identified as having participated in "clearance operations" in other villages, but further investigation is needed to determine their precise involvement. Riot security police, known in Myanmar language as *Lon Htein*, which is part of the Myanmar Police Force, were also identified as participants in certain locations. Mass gang rapes of women were perpetrated inside police compounds. The police were perpetrators in some of these instances.

1257. Many Rohingya victims were able to identify particular police uniforms, and distinguish between the different police units, but not always. Identification was particularly challenging in the chaos of the "clearance operations". As such, further investigation is needed to better understand the specific roles of these various groups. At the same time, the Mission confirms the participation of all three institutions in the 2017 "clearance operations". Moreover, the coordinated manner of their involvement in these wider operations indicates that they were acting under the Tatmadaw's effective control.

(c) Civilian perpetrators

1258. While the range and gravity of acts of non-security forces varied from village to village, the participation of ethnic Rakhine and members of other minority groups in the "clearance operations" was widespread. These civilians participated in identifiable and consistent ways, carrying out specific functions. They acted alongside, complementary to, and usually in tandem with, the Tatmadaw and other security forces. Civilian participants systematically arrived at Rohingya villages as part of the military operation, with the necessary tools, equipment or weaponry to carry out the specific designated tasks: matches and inflammable liquids for burning; sacks or vehicles for looting; and swords or guns for violent acts, including killings. Civilian perpetrators were particularly involved in the systematic burning of Rohingya structures and appear to have been responsible for the continued burning of properties after the completion of the "clearance operations", and as recently as March 2018. Sometimes ethnic Rakhine were also perpetrators of rape and other forms of sexual violence.

1259. In some specific locations, the Tatmadaw actively distributed the weaponry to ethnic Rakhine in the course of the "clearance operations". This pattern of behaviour, across different villages and locations, demonstrate that the participation of these groups was organized and not *ad hoc* or opportunistic in nature. The manner in which ethnic Rakhine and other minorities participated in the "clearance operations" demonstrates that their involvement was planned, coordinated and implemented under the command and control of the Tatmadaw.

[2813] Facebook posts and photos, on file with the Mission, V-067.

[2814] LI-112, ZI-001, RI-012, LM-006. See also S. Lewis, Z. Siddiqui, C. Baldwin, A. Marshall, "The Shock Troops who expelled the Rohingya from Myanmar" (Reuters, 22 June 2018).

[2815] Facebook photos, on file with the Mission.

1260. The Mission has maintained a list of names of individual civilian perpetrators for whom it has received indications that they were involved in the "clearance operations", including village administrators or former village administrators.

Ethnic Rakhine and NaTaLa residents

1261. In a large number of Rohingya villages where "clearance operations" were conducted, participating ethnic Rakhine were recognized by witnesses as neighbours from nearby Rakhine villagers.[2816] In other cases, villagers participating in violent acts were identified as residents of nearby NaTaLa "model" villages,[2817] some of whom were identified as ethnic Rakhine, although, given the mixed-ethnicity of NaTaLa villages, this cannot be assumed. In the majority of such cases, ethnic Rakhine and NaTaLa villagers who participated in the "clearance operations" wore the regular, traditional clothes, such as t-shirts and mid-length shorts ("bombi") or sarongs ("longyi") that are worn by ethnic Rakhine villagers in everyday life.[2818]

1262. In other instances, Rohingya villagers noted the participation in the "clearance operations" of persons they presumed to be ethnic Rakhine, although they did not recognise the individuals themselves. In certain locations there was an indication of new persons being transported into Rakhine State in advance of 25 August 2017, including new residents seen arriving in NaTaLa villages. Some of these new arrivals were later witnessed participating in "clearance operations" in specific locations[2819]

1263. Some current and former ethnic Rakhine village-level administrators also played prominent roles in specific "clearance operations". For example, in two of the most serious incidents, in Chut Pyin and Min Gyi, the role of the Rakhine village tract administrator appears to have been pivotal in both assisting the Tatmadaw in advance of the operation, including allegedly ensuring that the Rohingya villagers were inside the village at the time of the attack, and during the "clearance operation" itself.

1264. In other locations, ethnic Rakhine administrators or former administrators were also seen actively participating in the violence.[2820] In two villages, armed administrators reportedly guided the Tatmadaw soldiers through the village, showing them the way and identifying relevant targets.[2821]

1265. The Mission notes that the Tatmadaw are undisciplined in relation to the consistent wearing of uniforms, and notes credible reports of security forces deliberately wearing civilian clothes to obscure their identity during the 2017 "clearance operations".[2822] In some cases, members of the security forces in civilian clothes could have been mistakenly identified as ethnic Rakhine (or members of other minority groups). However, in light of the overwhelming number of accounts from Rohingya who recognised their neighbours, the Mission confirms the direct role played by ethnic Rakhine in the "clearance operations".

Pyi Thu Sit and other armed Rakhine, including militias

1266. In some locations, Rakhine militias (Pyi Thu Sit) participated in acts of violence against Rohingya. In some cases, villagers actively could identify them as such, because either they knew of the existence of these groups and the identity of members of the Pyi Thu Sit in their village, they witnessed groups being trained in public areas, or because they were recognisable as they wore some type of adapted military uniform.[2823] For example, a man from Ta Man Thar Village Tract, northern Maungdaw Township, could easily recognise and identify the Pyi Thu Sit in his village because, as the local tailor, he altered their uniforms.[2824]

[2816] CI-029, CI-034, CI-049, CI-050, CI-120, CI-124, LI-006, LI-033, LI-037, LI-059, LI-062, LI-065, LI-066, LI-069, LI-081, LI-102, LI-103, LI-104, LI-109, LI-112, LI-120, LI-129, LI-132, WI-005, WI-006, WI-032, WI-044, WI-048, QI-002, QI-005, QI-012, QI-027, QI-049, QI-058, QI-061, QI-071, YI-006, YI-019, YI-025, YI-030, YI-031.

[2817] CI-034, CI-125, LI-054, LI-066, LI-102, LI-120, LI-132, WI-048, V-075.

[2818] CI-029, CI-137, CI-138, CI-146, LI-003, LI-037.

[2819] LI-054, LI-061, LI-063, LI-065, LI-066, LI-071, LM-006.

[2820] CI-049, CI-050, CI-124, LI-102, WI-032.

[2821] LI-102, YI-030.

[2822] E.g. Wa Lone, Kyaw Soe Oo, S. Lewis, A. Slodkowski, "Reuters Special Report: Massacre in Myanmar" (Reuters, 8 February 2018).

1267. In other villages, however, ethnic Rakhine were not in uniform but were armed with military-grade weapons. In some cases, these weapons were seen being distributed to ethnic Rakhine by the Tatmadaw immediately prior to a "clearance operation".[2825] As noted above,[2826] the Government has acknowledged that it had actively organized Rakhine militia groups after 2016. In view of this, it is possible that, in locations where ethnic Rakhine were using military grade weapons, the Tatmadaw had mobilised them as part of the strategy of arming new militias.

Role of other minority groups

1268. In fewer villages, other minority groups were identified as participating in the "clearance operations". This included sightings of Khami, Hindu, Mro (also referred to as Murong), Thet, Daignet (also referred to as Chakma) and Borua (Myamagi) individuals.[2827] There were also references to Bangladeshi Rakhines who had recently returned to Myanmar.[2828]

1269. Rohingya villagers were able to identify the minorities who were participating in the "clearance operations", either through their distinctive dress or because they were personally known to them.[2829] In three locations, however, Hindus were identified as participating in "clearance operations" while wearing clothes traditionally worn by Muslims.[2830] As one Rohingya witness noted:

> *I saw about six members of the Hindu community walking with the military. I was surprised as they were wearing Muslim dress. I recognized these men because they were known to me, they were the barbers at the market from Taung Bazaar, but they often came to our village market too. They were wearing white cleric clothes (kurta) and skullcaps.*[2831]

1270. While the Mission has not been able to verify these allegations, it takes note of credible reports that described how the government had circulated false photos of persons revealed to be Hindus dressed in Muslim traditional dress, allegedly burning their own village, provided on a State-sponsored international tour of Rakhine State in September 2017.[2832]

1271. Moreover, Rohingya often use the collective term "*Mog*", usually to refer to a person of ethnic-Rakhine ethnicity. In some cases, the label is used more broadly to refer to any person of non-Rohingya identity. As such, in all cases, the Mission sought to clarify the ethnic identity of persons identified in this way. Indeed, in most cases interviewees were able to provide specific clarification as to who was being identified. However, given the fluidity of the term's use, the role of other groups in the "clearance operations" will require additional investigation.

[2823] LI-052, LI-104, LI-118.

[2824] LI-104.

[2825] LI-052, LI-103, YI-031.

[2826] See this chapter, section D.2.b: The build-up to 25 August 2017.

[2827] CI-124, CI-125, CI-135, CI-148, CI-189, CI-198, EI-051, EI-053, LI-044, LI-059, LI-076, LI-104, LI-109, LI-111, LI-119, WI-034, WI-044, QI-012, QI-022, QI-058, QI-109, RI-007, WI-034, WI-044.

[2828] WI-034, LI-054.

[2829] CI-135, CI-148, CI-189, CI-198, EI-053, LI-044, QI-012, QI-022, QI-058, RI-007, WI-044.

[2830] LI-044, LI-059, QI-012.

[2831] LI-044.

[2832] See for example J. Head, "Rohingya crisis: Seeing through the official story in Myanmar" (BBC, 11 September 2017)

(d) ARSA

1272. ARSA also committed serious human rights abuses, including the killing of dozens of suspected informants and the burning of the Rakhine village of Ah Htet Pyu Ma on 25 August 2017. Although the Government has claimed that ARSA burned Rohingya villages, the Mission found no indication of this. Other abuses allegedly perpetrated by ARSA, including several incidents where Rakhine and members of other ethnic groups, including the Mro, were killed, require further investigation, as does the killing of up to 100 Hindu men and women from Kha Maung Seik. The Mission's primary source information on the latter incident corroborates the killing, but is inconclusive as to the perpetrator. Other militant or criminal groups were also active in the region and may have been responsible also for abuses.

5. Violations of international law

1273. The "clearance operations" of both 2016 and then again of 2017 in northern Rakhine State were brutal and disproportionate. They were undertaken in total disregard for human life and dignity, without any respect for human rights, in complete and consistent violation of all cardinal principles of international humanitarian law. Violations of this gravity and scope are only possible when driven by absolute contempt for the victims against which they are perpetrated.

1274. This section provides a brief overview of the kinds of violations of international law perpetrated in the course of the "clearance operations", focusing on international human rights law and international humanitarian law. The extent to which these serious human rights violations and violations of international humanitarian law may amount to serious crimes under international law is examined in chapter VIII below.

(a) International human rights law

1275. The use of excessive force is prohibited under international human rights law.[2833] For the use of force not to be excessive, it must comply with the principles of legality, necessity and proportionality, and the degree of force should be limited to the minimum necessary in the circumstances. It must be targeted at individuals using violence, or at averting an imminent threat. These criteria were manifestly not fulfilled in the "clearance operations" of 2016 and from 25 August 2017 in Rakhine State. The operations have thereby given rise to an overwhelming breadth of violations against civilians in Rakhine State, in particular the Rohingya, under international human rights law. The widespread killings in Rakhine State violated the right to life, a non-derogable right, which forms part of customary international law. The Mission considers that the estimate of 10,000 persons killed as a consequence of the 2017 "clearance operations" alone, is conservative.

1276. The endemic rapes, mass gang rapes, and sexual violence against Rohingya women and girls, and sometimes men and boys, violated the rights of these victims to security of the person, and the right to be protected from torture and other ill-treatment. Violence against women and girls, including sexual and gender-based violence, is also a form of discrimination prohibited by the Convention on the Elimination of All Forms of Discrimination against Women. Myanmar's failure to prevent, investigate, prosecute and punish acts of sexual and gender-based violence violates its obligations as a State party to this convention.[2834] The deliberate killings and indiscriminate attacks on children and infants also violated the Convention on the Rights of the Child. As a State party, Myanmar is obligated to guarantee children, that is, all persons under the age of 18, the rights to life, survival and development, and to protection from all forms of physical or mental violence, injury and abuse, including sexual abuse; and not to be tortured, nor suffer other cruel, inhuman or degrading treatment or punishment.[2835] Under the CRC, governments must do everything they can to protect and care for children affected by armed conflicts. In the context of the clearance operations, rather than being protected and cared for, children and infants were directly targeted and killed, often as their parents looked on.

[2833] See chapter II, section C: Legal framework.

[2834] CEDAW, arts. 2 and 15.

[2835] CRC, arts. 1, 4, 6, 7, 19, 24, 28, 34, 37.

1277. The arbitrary arrests and, in some cases, enforced disappearances of Rohingya in Rakhine State during the "clearance operations" violated the right to liberty and security of the person and to freedom from arbitrary arrest and detention, as well as Myanmar's obligation to ensure that people arrested or detained are informed of the reasons for arrest or detention, are brought before a court promptly, and are afforded a fair and public hearing by a competent, independent and impartial tribunal established by law. Enforced disappearance, whereby the authorities have refused to acknowledge the arrest, or concealed the detention, of Rohingya, taking them outside the protection of the law, put Myanmar in breach of the customary law prohibition on enforced disappearances, and the Declaration on the Protection of Persons from Enforced Disappearances. The torture that often accompanied these arbitrary arrests is also prohibited, the prohibition against torture being absolute under international human rights law.

1278. The destruction and burning of Rohingya homes and the obliteration of their former villages violate the right to adequate housing as provided for under the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Myanmar is a party. The destruction of entire Rohingya villages, which was often preceded by wide scale looting, and the subsequent endemic terrain clearance and rebuilding, also violates the rights to own property and not to be arbitrarily deprived of it.[2836]

1279. The ICESCR also protects the right to adequate food and housing.[2837] Following the ARSA attacks of October 2016, access to agricultural land, forests, and fishing was severely limited, which denied Rohingya access to food, livelihoods and income. Lack of access to adequate food and housing was also a notable feature of the journey to Bangladesh, with many in Bangladesh continuing to suffer, having lost all ability to support themselves. The severity of the restrictions from November 2017 onwards for those who remained in Rakhine State, has led many of the remaining Rohingya to leave Myanmar, including as a result of food deprivation.

1280. The ICESCR also protects the right to the highest attainable standards of physical and mental health.[2838] The total absence of any medical assistance for those wounded, who then had to walk days or weeks through forests, across rivers and over mountains, led to further casualties. In addition to the wide-scale arbitrary deprivation of Rohingya life, a large number of villagers were left with significant physical injuries, many life-changing and permanent, as well as deep and enduring psychological trauma.

1281. Reports also estimate that 30,000 non-Rohingya civilians were displaced from their homes and villages as a result the violence in Rakhine State. The rights of these people to adequate food, housing, and the highest attainable standards of physical and mental health were also violated.

1282. Some of ARSA's conduct also constitutes human rights abuses, notably where they have killed suspected Rohingya informants or burned the Rakhine village of Ah Htet Pyu Ma.

(b) International humanitarian law

1283. The Mission considers, from the patterns described in this report, that the Tatmadaw and other security forces have not distinguished between civilians and civilian objects, on the one hand, and fighters and military objectives, on the other. They have readily engaged in attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, that is clearly excessive to any concrete and direct military advantage that could be anticipated. No efforts have been made to take any feasible precautions to avoid and minimize incidental loss of civilian life, injury and damage to civilian objects. On the contrary, the Mission has concluded that civilians, including children, were deliberately targeted. Rohingya villages were burned, and now in many cases cleared, to leave no trace of having once existed. Through this conduct, the Tatmadaw has consistently violated the fundamental tenets of international humanitarian law.[2839]

[2836] UDHR, art. 17.

[2837] ICESCR, art. 11.

[2838] ICESCR, art. 12(1).

1284. There is no indication that the "clearance operations" were, in any way, necessary to address a concrete military threat posed by ARSA or were proportionate. No military or security objective could ever justify the complete dismissal of a group's basic human rights, including the non-derogable rights to life and physical and mental integrity. The widespread burning and destruction of houses, mosques, and madrassas, all civilian property, also violate international humanitarian law.

1285. There can never be a necessity to engage in mass killings, including of women and children; in rape and sexual violence on a massive scale; in the specific targeting of children; or in the large-scale and deliberate looting and destruction of complete villages across three townships. The conduct exhibited by the Tatmadaw and other security forces, with the support of local ethnic Rakhine, resulted in violations of international humanitarian law at shocking levels.

1286. ARSA is also bound by international humanitarian law, which it has violated. For example, the burning of the Rakhine village of Ah Htet Pyu Ma would in all likelihood be a violation of the principle of distinction and proportionality.

VI. Emblematic situation 3: Democratic space and the exercise of fundamental freedoms

1287. Since 2011, there has been a remarkable opening up of democratic space in Myanmar compared with the preceding 50 years, including a more open environment for people to express themselves and to participate in protests, a freer media environment, and increased access to and freedom for Internet users, including through social media.[2840] For example, the release of prisoners of conscience has been highlighted as one of the main achievements of the Myanmar government since 2011, benefitting thousands of prisoners.[2841]

1288. However, while Myanmar has made significant strides, challenges and negative trends have emerged too, especially since 2015. The democratic transformation of the country remains in its early stages. Indeed it has barely begun with the military maintaining a dominating role in politics. Observers reported increased restrictions on the rights to freedom of expression, association and peaceful assembly; continuing arrest and detention of individuals in relation to the exercise of these rights; and an increasing intimidation, monitoring and surveillance of human rights defenders.[2842] Despite the release of many political prisoners, their number was still reported as "alarmingly high".[2843]

1289. The Mission focused its examination of the issue on two related trends: the apparent discomfort of the Myanmar authorities with scrutiny and criticism, resulting in the active silencing of critical voices, and the authorities' inadequate response to, and fuelling of, "hate speech".

[2839] As explained in chapter II, section C: Legal framework, the Mission considers the situation in Rakhine State to amount to a non-international armed conflict since at least August 2017.

[2840] E.g. A/HRC/22/58, paras. 15, 24; A/HRC/28/72, para. 4; A/HRC/31/71, para. 18.

[2841] See A/HRC/22/58, para. 6; A/HRC/25/64, para. 4; A/HRC/31/71, para. 28.

[2842] E.g. A/HRC/28/72, para. 8.

[2843] E.g. A/HRC/22/58, para. 7; A/HRC/28/72, para. 15; A/HRC/31/71, para. 28.

A. Silencing of critical voices

1290. The Mission observed at least three aspects of a broader trend to deliberately silence critical voices, negatively affecting democratic space: the continued use of a range of domestic laws criminalising the peaceful exercise of fundamental freedoms; the intimidation of and reprisals against individuals for their (perceived) engagement with the United Nations and other international actors; and the curtailment of peaceful protests.

1. Legal toolbox for restricting fundamental freedoms

1291. The interrelated rights to freedom of opinion and expression, association, and peaceful assembly are fundamental freedoms, critical to the functioning of a democracy and necessary for the realization of all other rights. They are firmly protected under international human rights law.[2844] Although Myanmar has not yet ratified the International Covenant on Civil and Political Rights (ICCPR), the ICCPR's provisions regarding the rights to freedom of opinion and expression, association, and peaceful assembly, as well as the interpretation and application of these provisions in international jurisprudence, remain relevant. Myanmar has ratified other treaties with comparable provisions, most notably the Convention on the Rights of the Child.

1292. Under international human rights law, the rights to freedom of expression, association and peaceful assembly are not absolute. The exercise of the right to freedom of expression (which includes the freedom to seek, receive and impart information and ideas of all kinds) may be subject to restrictions. However, such restrictions must be provided by law and be necessary in a democratic society for the respect of the rights or reputations of others, or for the protection of national security or public order, or of public health or morals.[2845] Necessary restrictions must be proportionate and formulated with sufficient precision. Where restrictions seek to protect national security, they are permissible only in serious cases of political or military threat to the entire nation. The right to freedom of expression embraces even expression that may be regarded as deeply offensive. All public figures, including those exercising the highest political authority, are legitimately subject to criticism and political opposition. Criticism of such officials, even where considered insulting, is insufficient to justify the imposition of penalties.[2846] The exercise of the rights to freedom of association and of peaceful assembly can be limited under similarly strict conditions only.

1293. The problem with the Myanmar domestic legal framework is twofold. First, the constitutional human rights guarantees with respect to the rights to freedom of opinion and expression, association and peaceful assembly are weak and ambiguous. Section 354 of the 2008 Constitution protects these rights for "citizens", if "not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality". Apart from the fact that, under international law, these rights should not be limited to citizens only, the concept of "community peace and tranquillity" is impermissibly vague and broad. In addition, the key requirement that the restriction be "necessary" to achieve the stated goals is missing. Second, multiple domestic laws contain imprecise or overly broad restrictions on the exercise of fundamental freedoms, including through the criminalisation of the peaceful exercise of such rights.

1294. Problematic laws that are frequently used to arrest, prosecute and convict civil society actors, journalists, lawyers and human rights defenders, with a view to intimidate and silence them, include:

- Sections 143-147 of the Penal Code, penalising unlawful assemblies: these provisions contain an overly broad definition of unlawful assemblies, which may encompass peaceful assemblies. Importantly, section 147 stipulates that, when force or violence is used by an unlawful assembly, or by any member thereof, *every* member of such assembly is guilty of the offence of rioting. However, the right to peaceful assembly is an individual right: therefore, an assembly cannot be considered violent because a few people in the assembly take violent action. Individuals who do not engage in violence or incitement to violence should not be held responsible for the actions of others.[2847] Such provisions allow for treating entire public protests as "unlawful" and for resorting to mass arrests of participants.

[2844] UDHR, arts. 19-20; ICCPR, arts. 19-22; CRC, arts. 13, 15; CPRD, art. 21; ASEAN Declaration, arts. 23-24.

[2845] ICCPR, art. 19(3); CRC, art. 13.

[2846] United Nations Human Rights Committee, General Comment no. 34 (CCPR/C/GC/34).

- Sections 499-502 of the Penal Code, criminalising defamation[2848]: under international human rights norms and standards, imposing criminal penalties for defamation is an unjustifiable restriction on the freedom of expression. Criminalising defamation dissuades individuals from criticizing officials or government policy. Civil liability proceedings should be the sole form of redress for complaints of damage to reputation.[2849] In Myanmar, defamation laws are frequently used against journalists and other media workers for articles critical of the government or of security forces.
- Section 505(b) of the Penal Code criminalising whoever makes, publishes or circulates any statement, rumour or report with intent to cause, or which is likely to cause, "fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity". This provision is too broad and imprecise, according to international human rights norms and standards. Criminally restricting speech because it is "likely to cause alarm" that "may" lead a person to commit an offence against "public tranquillity" cannot be justified as a necessary measure in a democracy. The terminology used is also too vague for an individual to know what is impermissible, and opens the door for abuse by law enforcement officials, notably to silence critical voices. This provision has been used regularly against critics of the Myanmar government or military, for example, in relation to public protests. After the Arakan Liberation Party (AKP) published a statement in April 2016 alleging that the Tatmadaw had committed violations against civilians in Rakhine State, including forced labour and ill-treatment, Khaing Myo Htun, who was at the time the AKP's deputy information officer, was convicted under sections 505(b) and (c) and sentenced to 18 months in prison, despite having provided evidence to substantiate the allegations.[2850]
- The Official Secrets Act, penalising the receipt or dissemination of a broad range of documents and information, particularly government documents. Several provisions, in particular sections 3 and 5, are contrary to international norms and standards because they are too broad to be "necessary" in a democratic society. In essence, they cover any type of information, including what may be in the public interest. Restrictions on freedom of expression (including the freedom to seek, receive and impart information and ideas of all kinds) are permissible for the protection of national security but only in serious cases of political or military threat to the entire nation.[2851] Article 5, however, criminalises the disclosure, possession or receipt of documents or information without the requirement of demonstrating that its disclosure threatens national security or public order. The Act can easily be used to deny information to the public and to conceal government wrongdoing. Article 3(1)(c) further includes a particularly broad definition of "spying", including the making, receiving or communication of any document that is "calculated to be", "might be" or is "intended to be" "directly or indirectly useful to a foreign country". The penalty for such forms of spying is imprisonment up to 14 years. The Act does

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[2847] A/HRC/31/66, para. 20.

[2848] Other domestic laws also criminalize defamation, including the Telecommunications Law, the Electronic Transactions Act, and the News Media Law.

[2849] See A/HRC/14/23, para. 83-84. See also United Nations Human Rights Committee, General Comment No. 34 (CCPR/C/GC/34), para. 47.

[2850] K-104; A/HRC/34/67; MMR 2/2016.

[2851] United Nations Human Rights Committee, General Comment No. 34 (CCPR/C/GC/34).

not require actual harm to national security, or even a real risk of such harm. However, the potential usefulness of the information to another country does not necessarily equal a threat to national security. As the case against the two Reuters journalists shows, as detailed below, the Official Secrets Act can be abused to intimidate journalists from undertaking legitimate journalistic work.

- Article 66(d) of the 2013 Telecommunications Act, criminalising defamation using a telecommunication network. This provision made seven online acts punishable: blackmailing, bullying, making wrongful restraint on, defaming, disturbing, exerting undue influence on or threatening a person. An amendment adopted in 2017 limited these offenses to extorting, defaming, disturbing or threatening a person using a telecommunications network, and reduced the maximum sentence to two years imprisonment (from three). None of these punishable acts are defined, and some of the concepts are subjective, opening the door to abuse. Some of the acts, such as "disturbing" a person, would also not constitute a legitimate aim necessitating restriction in a democratic society. As mentioned in relation to sections 499-502 of the Penal Code, defamation should also not be criminalised. Article 66(d) has been described as "the most notorious symbol of the unsuitability of the legal framework, regularly appearing in the media and online as a tool to repress and punish those speaking truth to power".[2852]
- Other similarly problematic laws include the Emergency Provisions Act (1950)[2853], the State Protection Act (1975)[2854], the Electronic Transactions Act, the News Media Law, the Printing and Publishing Enterprise Law, the Law Protecting the Privacy and Security of Citizens, the Unlawful Associations Act (section 17.1), the Peaceful Assembly and Peaceful Procession Act, and several other provisions of the Penal Code (e.g. section 124a regarding sedition). These have all been used in cases against human rights defenders and journalists.[2855]

1295. These problematic laws constitute a veritable toolbox for State officials and representatives wishing to stifle dissent and evade legitimate scrutiny of their actions. It provides them with various options to curtail and punish the legitimate exercise of the rights to freedom of expression, association and peaceful assembly.[2856] The use of these laws to silence critical voices has been a regular, and increasing, occurrence throughout the period under review. Individuals who are critical of the government or security forces, and who expose or speak out against human rights violations, are particularly vulnerable.[2857] Persons targeted include those who have taken a public stance in relation to land confiscation, large-scale development projects, environmental degradation, constitutional reform, and on military and security operations across the country. The use of such laws has curbed the democratic space in Myanmar.

1296. One notable example has been the case of the two Reuters journalists, Wa Lone and Kyaw Soe Oo, who were arrested and detained in December 2017, ostensibly for alleged violations of the Official Secrets Act, but in reality in an attempt to prevent or punish them from publishing a story about serious human rights violations committed by the Myanmar security forces. In July 2018, they were charged with offences under the Act with a maximum sentence of 14 years imprisonment. On 3 September 2018 they were convicted and sentenced to seven years imprisonment.[2858] The prosecution of acts of investigative journalism into allegations of human rights violations in Rakhine State, which are issues of the highest public interest, is of grave concern.[2859] The Mission considers that the two journalists have been convicted and are now being punished severely for carrying out their responsibilities as journalists relating to the exposure of serious human rights violations. This high-profile case sends a chilling message to other journalists and human rights defenders, not only undermining freedom of expression and access to information but also deterring the protection and promotion of human rights.

[2852] Free Expression Myanmar, "66(d): No real change" (December 2017).

[2853] Repealed in 2016.

[2854] Repealed in 2016.

[2855] E.g. A/HRC/32/71, para. 19.

[2856] For example, in 2017, the Special Rapporteur on the human rights situation in Myanmar stated to have received information on approximately 170 individuals imprisoned for peacefully exercising their rights to freedom of opinion and expression, and of association and assembly (A/HRC/34/67, para. 26).

[2857] E.g. BM-007, BM-008, BM-039, PI-037, PI-038, PI-106, QM-006.

[2858] Reuters, "Statement from Stephen J. Adler, President and Editor-in-Chief, Reuters, on reporters Wa Lone and Kyaw Soe Oo, Sep 3, 2018" (3 September 2018); OHCHR, "Comment by UN High

2. Intimidation and reprisal for engagement with the United Nations

1297. There have been numerous allegations of intimidation and reprisals against individuals who have engaged with United Nations officials in the country or abroad, including the Special Rapporteur on the situation of human rights in Myanmar during her visits to the country. The Special Rapporteur and other mandate holders, as well as the United Nations Secretary-General, have raised concern about such allegations.[2860] The Human Rights Council emphasized in its resolution 34/22 on the human rights situation in Myanmar that no one should face reprisals, monitoring, surveillance, threats, harassment or intimidation for cooperating or speaking with special procedures, including the Special Rapporteur, the Fact-Finding Mission or the United Nations.

1298. The Mission received many reports of such intimidation or reprisals for actual or perceived engagement with the United Nations or other international actors, including members of the diplomatic community. For example, the Mission corroborated an incident in Koe Tan Kauk Village Tract, Rathedaung Township, Rakhine State, in November 2016, following a high-level visit including the then United Nations Resident Coordinator and several ambassadors. During the visit, Rohingya villagers shared information about their situation with the delegation.[2861] Officials took photos and videos of persons interacting with the delegation.[2862] A few days later, security forces came to the village, rounding up men and boys, subjecting them to ill-treatment and verbal abuse. One of the security officers filmed the incident, footage that was later circulated on the Internet.[2863] While the women and children were abused for a few hours, the men and boys were detained for two days. In the course of their ill-treatment, references to the United Nations were made, asking villagers why they explained their problems to the United Nations[2864], or accusing them of "eating food provided by UNHCR or WFP".[2865] A number of men were subsequently taken to Sittwe prison.[2866] The Mission received credible information suggesting that one detainee may have been killed while in custody.[2867] After the video entered the public domain, the Government issued a public statement claiming that a police operation had been launched in relation to an ARSA attack, the perpetrators of which were supposedly hiding in Koe Tan Kauk. However, it was also acknowledged that the security forces were looking for a man who "distributed documents and placards enclosing fake information to villagers while a team of foreign diplomats arrived in this village".[2868] The

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Commissioner for Human Rights Michelle Bachelet on the conviction of two Reuters journalists in Myanmar" (3 September 2018).

[2859] See also Y. Lee, D. Kaye, "Myanmar: UN experts gravely concerned by court charges against Reuters journalists" (press release, 11 July 2018), (https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23357&LangID=E).

[2860] E.g. A/HRC/34/75, para. 10; A/HRC/36/31, paras. 43-45.

[2861] EI-070, QI-113, XI-001.

[2862] CI-116, CI-118, CI-119.

[2863] BBC News, "Myanmar police officers detained over Rohingya beatings video", 2 January 2017 (https://www.youtube.com/watch?v=vJLAZKTPQgE).

[2864] XI-001.

[2865] RI-003.

[2866] CI-116, CI-118, CI-119, CI-179, XI-001.

[2867] CI-116, CI-118, CI-119, XI-001.

[2868] Information Committee, "Press Release on a video clip which members of Police Forces took during area clearance operation in Kotankauk Village, Maungdaw", 2 January 2017 (https://www.facebook.com/InfomationCommittee/posts/663761827130260).

Mission is satisfied that this incident is linked to the visit of foreign dignitaries and constitutes a reprisal.[2869]

1299. Numerous interlocutors of the Mission expressed fear that their possible engagement or sharing of information with the Mission might lead to intimidation, harassment and other forms of reprisals from the Myanmar government and security forces. Civil society actors and human rights defenders in particular spoke of the constant threat of punishment for the exercise of their rights and for being in contact with United Nations officials. The Mission considers that the anti-United Nations climate actively fostered by the Myanmar authorities has contributed to this situation.

3. Curtailment of peaceful protests

1300. The Mission corroborated cases of excessive use of force in the management of protests and demonstrations, and prosecution of participants in protests and demonstrations, curtailing the right to peaceful assembly. A notable case is the shooting of protesters by the police in Mrauk-U in January 2018.[2870] In another recent example, individuals holding peace protests in late April and May 2018, in several cities including Myitkyina, Bago, Mandalay and Yangon, in solidarity with internally displaced persons trapped in Kachin State, have been charged under the Peaceful Assembly and Peaceful Procession Act.[2871] In Yangon, protestors were also beaten. One participant told the Mission:

> *On 12 May 2018, we started to march and sing songs but police with water cannons blocked our way. The police said they had an order to block the march. We had decided to end the march when the police started to beat up protestors. There were also plainclothes individuals present who were not police but working alongside them. The police arrested nine people, including some protestors and some passers-by. Now, 17 people have been charged.*[2872]

1301. Considering these, together with other credible reports of similar instances[2873], the Mission concludes that there is a pattern of using excessive force in the management of protests and demonstrations and prosecuting participants, with the purpose or effect of silencing critical voices.

B. The issue of "hate speech"

1302. Anti-Rohingya and broader anti-Muslim sentiment, including "hate speech", is widely prevalent in Myanmar, even in the most progressive pro-democracy circles. As discussed above[2874], in relation to the 2012 violence in Rakhine State, a campaign of hate and dehumanisation of the Rohingya had been underway for months prior to the violence. This campaign was led by the Rakhine Nationalities Development Party (RNDP), various ethnic Rakhine organizations, radical Buddhist monk organizations (including the 969 group), several officials and influential figures.

1303. Virulent hate speech against the Rohingya, and Muslims in general, has not stopped since then.[2875] On the contrary, it has intensified. While messages of hatred are propagated by a multitude of actors, it is commonly recognised that ultranationalist elements within the Buddhist monkhood are the most active, well-resourced and effective in this regard. This includes the 969 movement, created in 2012, and the Organization for the Protection of Race and Religion (known as MaBaTha), which emerged in 2014. High-profile monks, including Wirathu, Parmaukkha and Sitagu Sayadaw, have openly and actively espoused and promoted anti-Muslim narratives for many years.

[2869] Several of the Mission's interlocutors stated that the incident took place in relation to a visit of the UN Special Rapporteur on the human rights situation in Myanmar, Yanghee Lee. The Mission believes that these individuals witnessed the same incident, but confused the United Nations officials visiting.

[2870] See chapter V, section A.5: Emblematic incident: shooting in Mrauk-U on 16 January 2018.

[2871] See also Progressive Voice, "Time to Hear Our Voices – Freedom of Assembly and the Youth Peace Movement in Myanmar", July 2018.

[2872] PI-102.

[2873] E.g. A/HRC/22/58, para. 30; A/HRC/25/64, para. 28; A/HRC/28/72, paras. 19, 50; A/61/311, para. 35. Also PI-048.

[2874] See chapter V, section C.5: Violence in 2012, Spreading hate.

[2875] Several reports have also drawn attention to "hate speech" targeting other segments of the population, such as other ethnic or religious minority groups, women, and politicians. See e.g. Pen Myanmar, "Hate Speech: A Study of Print, Movies, Songs and Social Media in Myanmar" (2015); Institute for

1304. The Mission undertook an in-depth examination of the types of messages and narratives that are spread in such hate campaigns, as well as the Myanmar authorities' role and response. It considered such assessment critical in light of the alleged role of "hate speech" in the outbreaks of violence across Myanmar, but also because some observers have suggested a link between "hate speech" and the opening of democratic space in Myanmar, including increased levels of freedom of expression, a freer publishing and media environment, and easier access to the Internet and social media.

1. Legal framework

1305. The issue of "hate speech" should be considered in light of both the right to freedom of opinion and expression, and the rights to equality and non-discrimination. In principle, the right to freedom of opinion and expression embraces even expression that may be deeply offensive.[2876] However, under international human rights law, the exercise of human rights must not violate the rights and freedoms of others. Manifestations and expressions of deep-rooted hatred can undermine the rights of others under certain circumstances.[2877] With this in mind, international law distinguishes between expressions of hate that *must* be prohibited, those that *may* be prohibited, and those that *should* be protected from restriction.

1306. Expressions of hate that *must* be prohibited under international law include the direct and public incitement to commit genocide[2878]; any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence[2879]; and all dissemination of ideas based on racial superiority or hatred, and on incitement to racial discrimination.[2880] In contrast, the exercise of freedom of expression *may* be restricted where it presents a serious danger for others and for their enjoyment of human rights. Such restrictions must be provided by law in a clear and precise manner; be necessary in a democratic society for the respect of the rights or reputations of others or for the protection of national security or public order; and be proportionate.[2881] Forms of expression that do not fall under these categories, even where they are deeply offensive, are lawful and should be protected from restriction. This does not mean, however, that such speech should be considered acceptable. It may still pose a problem in terms of tolerance and may require a critical response from the State, in particular to address the underlying prejudices of which the speech is a symptom.

1307. While there is no definition of the term "hate speech" under international human rights law, this report uses it to refer to any expression of violent or discriminatory hatred towards people. In this sense, it encompasses expressions from each of the above mentioned categories (those that must be prohibited, those that may be prohibited, and those that must not be prohibited but may require a critical response).

1308. In resolution 34/22, the Human Rights Council calls on the Government of Myanmar to take further action to address the issue of hate speech in accordance with its resolution 16/18 and the Rabat Plan of Action. Human Rights Council resolution 16/18 on

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War and Peace Reporting, "No Hate Speech Project" (2017): https://www.facebook.com/NoHateSpeechProject/; see also A/72/382, para. 56. However, in light of the particular scale and intensity of the hate campaigns against Muslims, and Rohingya in particular, the Mission focused its attention on this phenomenon.

[2876] United Nations Human Rights Committee, General Comment No. 34 (CCPR/C/GC/34).

[2877] A/67/357, para. 37.

[2878] Genocide Convention, art. III (c).

[2879] ICCPR, art. 20 (2).

[2880] International Convention on the Elimination of All Forms of Racial Discrimination, art. 4.

[2881] See this chapter, section A.1: Legal toolbox for restricting fundamental freedoms.

"intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence, and violence against persons based on religion or belief" sets out an action plan for addressing intolerance based on religion and belief. It rests on the rationale that the promotion of inclusion, diversity and pluralism is the best antidote to intolerant expression, coupled with polices and laws to tackle the root causes of discrimination. The Rabat Plan of Action, adopted by experts following a consultative process under the auspices of OHCHR, provides authoritative guidance to States on the prohibition of "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence".[2882] The Mission considered these instruments in its assessment of the Myanmar Government's response to the issue of hate speech.

2. Findings

1309. The Mission received a substantial amount of information regarding instances of hate speech, as well as analytical reports examining patterns of hate speech in Myanmar.[2883] It also undertook its own research and verification. It actively monitored and consulted a wide range of publications and broadcasts, as well as a large number of online accounts, groups and pages that appeared to be regular disseminators of hate speech.

(a) Prevalance of hate speech targeting Muslims, Rohingya in particular

1310. There is no doubt that hate speech against Muslims in general, and Rohingya in particular, is extremely widespread in Myanmar. This includes prohibited advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The Mission has seen a vast amount of hate speech across all types of platforms, including the print media, broadcasts, pamphlets, CD/DVDs, songs, webpages and social media accounts. For example, the Mission encountered over 150 online public social media accounts, pages and groups that have regularly spread messages amounting to hate speech against Muslims in general or Rohingya in particular. Given Facebook's dominance in Myanmar, the Mission paid specific attention to a number of Facebook accounts that appear to be particularly influential considering the number of followers (all over 10,000, but some over 1 million), the high levels of engagement of the followers with the posts (commenting and sharing), and the frequency of new posts (often daily, if not hourly). In addition to those accounts, this chapter also draws from randomly encountered instances of hate speech.

1311. The examples presented here are but a small sample of the kinds of messages that have circulated in Myanmar in recent years. As posts can be shared by followers and then by their followers without limit, it has not been possible for the Mission to trace the full extent of the exposure they received. Subtleties in the Myanmar language and the use of fables and allegories make some potentially dangerous posts difficult to detect. Many messages are reportedly also shared through private communications means, such as Viber and Messenger, which are not accessible to the Mission.

1312. There is a great variety of derogatory terms used to refer to the Rohingya, or to Muslims in general. Typical descriptors for Rohingya are the terms "Bengali" (implying foreign origins) or "Kalar". The latter word is commonly attributed to people of South Asian descent. While some argue that it can be used in a benign manner, it is often used as a racist slur to insult and highlight someone's dark skin or foreign ancestry, signifying inferiority compared to "ethnic" Myanmar people. There is a range of other terms being used as well, some more subtle than others:[2884]

- **Mout Kalar** ("Muslim Kalar"): a term combining *mout*, short for Muslim, with *kalar*. The term was regularly used by the monk Wirathu, generally for all Muslims, sometimes specifically for Rohingya. For example, the late U Ko Ni, a well-known

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[2882] A/HRC/22/17/Add.4. See also: https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/RabatPlanOfAction.aspx.

[2883] B-001, B-002, B-003, B-004, K-070, K-093, K-098, K-101.

[2884] The examples in the following paragraphs have all been seen by the Mission. Some have subsequently been deleted; screenshots of the examples are on file with the Mission.

Muslim and legal advisor of the NLD, was frequently targeted on Facebook with insults such as *"Mout Kalar MP"* and *"Mout Kalar Nga Ni"*, *"Nga Ni"* being a rude name usually attributed to dogs.[2885] In one post from March 2016, a photo of U Ko Ni next to President Htin Kyaw was captioned "this Mout Kalar getting his foot in the door in Myanmar politics is not something we should sit by and watch. We need to do something right away."[2886] The post received over 800 reactions, 450 shares and 60 comments. Several comments called for U Ko Ni to be "removed":

> *Dear NLD and Htin Kyaw, you need to eradicate this Nga Ni. [...] Mout Kalar and the President should not be together. We don't want a Nga Ni. [...] There is no time to sit and wait. This is the time to stand up and kick him out.*[2887]
>
> *There is still time. Take action! [...] If not the 135 will have to cry. [...]Don't let a dog in the parliament.*[2888]

The Mission has seen multiple other posts with a similar message and threats towards U Ko Ni dating from between March and October 2016.[2889] On 29 January 2017, U Ko Ni was assassinated at Yangon International Airport.[2890]

- **Kway Kalar** ("Muslim dog"): *kway* means dog. In Myanmar, "dog" is extremely insulting when used in relation to a person or population, as dogs are considered part of the lowest categories of animals. In October 2017, a Facebook post by one influential and active disseminator of hate messages against Rohingya stated: "Now that the Sarong-covered Government is in power [the NLD Government led by the State Counsellor], Pa Khote Khu's history gets desecrated". This was in response to an interfaith event held in the town of Pa Khote Khu. The user talked about how in the past, the local "*Kway Kalar*" never dared to raise their heads while walking outside in Pa Khote Khu, a town close to the so-called Muslim-free Kyauk Pa Daung city. "I want to see when they will hold this kind of interfaith event in Kyauk Pa Daung. I'll be waiting", the author declared in a profanity-filled text, using the term "*Kway Kalar*" nine times in a short paragraph.[2891] The post was still active in July 2018, with over 200 reactions, 380 shares and 65 comments. Comments under the post used various expletives, accompanied by insulting pictures of dogs, criticizing the NLD government for organizing interfaith events and catering to the "Muslim dogs".[2892] Highly publicized interfaith "praying ceremonies" conducted in every state and region in Myanmar in October and November 2017 have attracted similarly negative and derogatory online commentary. The term "Muslim dog" has also been used by the Myanmar security forces during the post-August 2017 "clearance operations".
- **Ro-lein-nyar** ("Ro-liars"/"Rohingya are liars"): in Myanmar language, the pronunciation of the word "Rohingya" sounds similar to that of "Ro-lein-nyar", meaning "Ro-liar". This play on words implies that all Rohingya are liars, and is part of a widespread narrative claiming that there are no Rohingya, only "Ro-lein-nya". Often, the term is used in response to images and reports of abuses against the Rohingya. The term is also used when sharing or commenting on international media reports about the Rohingya to dispute the coverage. For example, on 11 February 2018 (two days after Reuters published its special report on the killing of 10 Rohingya in Inn Din), Shwewiki.com, a self-proclaimed "Media/News Company in Yangon" with over 1.3 million followers on Facebook, posted a link to

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[2885] V-023, V-030.

[2886] V-023.

[2887] V-024.

[2888] V-025.

[2889] V-027, V-028, V-029.

[2890] The Republic of the Union of Myanmar – President Office, "Press release regarding assassination of U Ko Ni", 30 January 2017.

[2891] V-031.

[2892] V-032, V-033, V-034.

an article titled, "The lies of the Ro-lein-nyars are exposed".[2893] It stated that the photos featured in the Reuters article were from "Boko Haram in Pakistan", where the "Huti insurgents" were killing the soldiers.[2894] The post called the Reuters article "fake news" promoting the "Ro-liars". The article refers to several ASEAN leaders supposedly condemning this "fake news". At the end, there is a "#Asia News Media Council Press Release" tag, claiming this is an official piece of news from a trusted source. The post had received over 4,000 reactions, 1,000 shares and 65 comments when last seen by the Mission. It has since been removed from the original Facebook and blog, but was still available on other online blogs.[2895]

- **Ro-gein-nya** ("Rohingya are lying dogs"): the term combines the sound "gein" – a sound that is attributed to dogs in Myanmar language – with Ro-lein-nyar mentioned above. Usually in cartoons, when a dog is hit, it makes the sound "gein". This dehumanizing term is used to depict the Rohingya as "lying dogs that need to be hit". One example of this usage is a June 2016 post from a monk, advertising the upcoming anti-Rohingya protests in Magwe Division and Karen State. The posts stated that "Magwe Division and Karen State are holding events to drive out the "Ro-gein-nya". The text in the photo said, "as the government did not issue an official objection to deny the request of the lying race (Rohingya), the people (in various regions) have organized protests".[2896] As of August 2018, the post was still on Facebook.
- **Anout Ta Kha** ("west gate"): a term connoting the western "entrance" to the country, namely Rakhine State and the western border with Bangladesh. The term is often used to raise fear among the public in relation to immigration and "foreign invasion". For example, on 12 October 2016, a few days after the first ARSA attacks, Dr. Tun Lwin, a well-known meteorologist with over 1.5 million followers on Facebook, called on the Myanmar people to be united to secure the "west gate" and to be alert "now that there is a common enemy". He further stated that Myanmar does not tolerate invaders. As of August 2018, the post had 47,000 reactions, over 830 comments, and nearly 10,000 shares.[2897] Several comments called for immediate "uprooting" and "eradication" of the Rohingya, citing the situation in Rakhine State as a "Muslim invasion".[2898]
- **Yay Myaw Kan Tin** ("unwanted person"): referring to "trash that is floating along a river reaches the shore, but no one knows its origins". In the Rohingya context, it has been commonly used to refer to "boat people", in particular during the 2015 Andaman Sea crisis when thousands of Rohingya fled Myanmar on boats. For example, in January 2017, a self-described pro-Myanmar patriot with more than 17,000 followers on Facebook posted a graphic video of police violence against civilians in another country. He captioned the post as follows: "Watch this video. The kicks and the beatings are very brutal. I watch the video and feel that it is not enough. In the future, 'Yay Myaw Kan Tin' 786 Bengali disgusting race of Kalar terrorists who sneaked into our country by boat, need to be beaten like that. We need to beat them until we are satisfied." One comment under the post reads: "It is very satisfying to watch this. […] It's sad that Myanmar security forces are not as skilful in their beating". In July 2018, the post had over 23,000 views, 830 reactions and 517 shares.[2899]

[2893] V-035.

[2894] Boko Haram is operating in Nigeria, not Pakistan. 'Huti' presumably refers to the Hoothi who are active in Yemen, again not in Pakistan.

[2895] E.g. https://www.apvolay.com/archives/9670 (accessed July 2018).

[2896] https://www.facebook.com/photo.php?fbid=1601058356872424&set=a.1381500878828174.1073741828.100009048252137&type=3; V-036.

[2897] https://www.facebook.com/tunlwin48/posts/1424521840895717; V-037.

[2898] V-040, V-041, V-042.

[2899] On file with the Mission.

- **Ae Soe** ("bad guest"): a term connoting the non-indigenous status of the Rohingya in Myanmar, referring to them as guests from another country and as "bad". This term is used to imply that Rohingya are "bad guests" because they "insult the host". For example, one account holder, supposedly a monk, posted a poem with graphic photos allegedly showing Buddhist Mros killed by the "Bengali" on 3 August 2017, along with photos of damage to a pagoda allegedly done by "Bengali". The poem goes "the bad guests destroyed a pagoda, killed and tortured our people – this we must not tolerate". The pictures from the post were still available on Facebook as of August 2018.[2900] The poem has been removed.

- **Kalar-Oak** ("camel"): Kalar-Oak as one word means camel, but also a "group of Kalar" (*oak* means group). The use of this derogatory term is linked to a Myanmar parable about a camel which gradually takes more and more space in his merchant's tent, until eventually the merchant is forced out. The parable implies that, if a few "Kalar" are let into the country, they will slowly take over and will force the original inhabitants out. In a post from the official Facebook page of the Office of the Tatmadaw Commander-in-Chief, Senior-General Min Aung Hlaing, this parable was explained in detail in connection with the issue of the Rohingya in Rakhine State. The post is one of a series of excerpts from the event "Talk on Rakhine Issue and Security Outlook", organized by the Myawaddy Media Group on 8 September 2017, and live-streamed on the Myawaddy Media and the Facebook pages of the Office of the Commander-in-Chief. After describing the merchant and camel parable, the moderator stated that "Islam is a disease spreading globally" and that "Muslims were attempting to islamise the whole world". Prior to its deletion by Facebook in August 2018, the post had almost 10,000 reactions, over 6,000 shares and 146 comments.[2901]

- **Khoe Win Bengali** ("Bengali that sneaked in"): in the Myanmar language, the term suggests that the Rohingya have illegally entered the country by stealth and that there is a plan to launch an invasion. For example, a post published on 26 August 2017 used the term numerous times interchangeably with the word "terrorists" to refer to ARSA and the Rohingya population together. Titled "a just war has started", the post wrote: "Even the UN that supports the Bengali... the US and British embassies... and the international community all condemned the actions of the *Khoe Win Bengali* terrorists. So, in this just war, to avenge the deaths of the ethnic people who got beheaded, and the policemen who got hacked into pieces, we are asking the Tatmadaw to turn these terrorists into powder and not leave any piece of them behind." The post, which included no examples in relation to the alleged killing of "ethnic people" and policemen, had 20,000 reactions, over 11,000 shares and 4,100 comments by July 2018.[2902]

- **Kalasoe** ("Bad Kalar"): the term precedes the emergence of ARSA and implies that Rohingya are violent. It has been prominently used after the 2012 violence in Rakhine State. For example, in June 2014, an excerpt of an article from the journal Myanmar Express was posted on an online blog. The excerpt featured an interview with a former military officer, Khin Nyunt, on the question of Rohingya.[2903] Khin Nyunt stated: "There is no Rohingya, because Rohingya are insurgents. There is RSO. We call them Kalasoe. Kalasoe insurgents are the RSO group, short for Rohingya Solidarity Organization. Rohingya is the name of insurgents".[2904]

[2900] https://www.facebook.com/photo.php?fbid=276331909519563&set=pb.100014282670913.-2207520000.1523636460.&type=3&size=607%2C873; V-043.

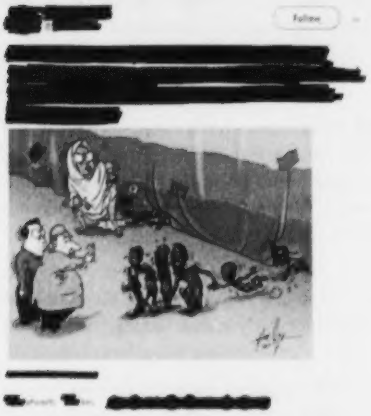
[2901] On file with the Mission.

[2902] On file with the Mission.

[2903] From 1997 to 2003 Khin Nyunt, then a General, was First Secretary (de facto Prime Minister) of the State Peace and Development Council, the military junta, and then he was formally Prime Minister from 2003 to 2004, when he was purged by the junta.

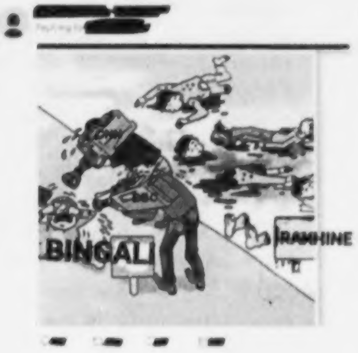
[2904] http://theimageofpeople.blogspot.com/2014/06/rso.html.

1313. Expressions using these derogatory terms are found frequently and in very large numbers, both offline and online. They are often accompanied by cartoons, memes or graphic content, amplifying the impact of the message. Below are two examples of widely shared cartoons. The first one is by Harn Lay, a famous Myanmar cartoonist.


[redacted]

[redacted]

[redacted]


[redacted]

[redacted]

1314. An in-depth content analysis of these and similar messages shows that they are all linked to the core theme of a "Muslim threat" endangering the Buddhist character of the nation. Underlying this theme are multiple narratives, including of Muslims/Rohingya as an existential threat to the country, of Muslims/Rohingya as a threat to Burmese racial purity, and of Islam as a threat to Buddhist religious sanctity and its status in Myanmar.[2905] Such narratives latch onto long-standing anti-Muslim prejudices and stereotypes; they are designed to stoke fear.

1315. First, Muslims, and Rohingya in particular, are represented as an existential threat to the country. Messages under this narrative revolve around mass illegal immigration and an invasion of the country (for example, "Bengali illegal immigrants", "illegal Bengali", "they will swallow us", "they sneak into the country", "boat people", "need to protect the Western Gate against a Muslim invasion", "they want to take away northern Rakhine as their independent state"), terrorism (for example, "Bengali extremist terrorists", "jihadists") and insecurity (for example, "criminals and rapists"). Such messages are frequently accompanied by news stories and graphic imagery pertaining to crimes committed by foreign terrorist groups such as ISIS, drawing also from pro-Rohingya statements made by such groups. The overall narrative is that Myanmar "ethnic" people should not tolerate mass illegal Muslim immigration, because "Bengali immigrants" or "terrorists" will violently alter the Buddhist character of the country and cause its demise. This is often made explicit with references to Afghanistan or Indonesia, underscoring how these countries were once Buddhist and are now majority Muslim. The following examples are illustrative:

- Thaki Thway, a MaBaTha's periodical, No 22 Issue 3, published on 6 May 2016, carried an article with a picture of Win Ko Ko Latt[2906] and others in an anti-Rohingya protest. Entitled "Let's oppose the Bengali trying to be Rohingya", the article stated that "the Bengali issue has been challenging successive governments and is growing bigger as a result. The Bengali are posing as refugees in the eyes of the world, while trying to create an independent Islamic state within Myanmar".[2907] The author went on to describe the connection between the Rohingya and other Islamic terrorist groups, such as ISIS, and how they have been trying to take over parts of other south-east Asian countries.

[2905] See also C4ADS, *Sticks and Stones - Hate Speech Narratives and Facilitators in Myanmar*, February 2016.

[2906] Win Ko Ko Latt is the chairman of Myanmar National Network, a nationalist organization closely related to MaBaTha. In 2017, he was arrested along with the monk Parmaukkha for their protest in front of the United States Embassy (in a protest against the use of the word "Rohingya").

- Another MaBaTha magazine, *Aung Zeyathu*, No 149, published on 18 November 2016, featured an article entitled "the Myanmar race can go extinct due to the Bengali". Written by a monk, it warns that, because of the ARSA "terrorist" attacks, Muslims in Rakhine State are not to be trusted and are using various means to swallow and overpower Buddhism in Myanmar, especially by demanding citizenship, which will, one day, lead to there being Muslim members in the Parliament. "At the new Parliament held on 1 February 2016, there was no Muslim. This is a surprise the Myanmar people should be proud of. In the future, we need to be careful and make sure that there is still no Muslim in the Parliament. If we do not succeed, we will need to issue laws to protect our country".[2908]

- *Aung Zeyathu* on 26 May 2017 also carried an article entitled "Our country, race and religion can only survive, if we defend them". The text warned that, if the people of Myanmar gave too much attention to human rights, Myanmar would "turn into a Muslim country".[2909]

- On his personal blog, Wirathu had posted a series of videos entitled "Defend against the dangers of Jihad"; "Jihad and the future"; and "Jihad war and future Myanmar"[2910], all calling for action against the "immediate" Islamic threat facing the country.

- The screenshot on the left below is an official statement issued by MaBaTha Baho (nationwide) on 1 June 2015. It reads: "There were instances when the race and religion were lost in Afghanistan, Pakistan, Bangladesh, Indonesia, Malaysia, south Philippines, south Thailand, and the Rakhine region in Myanmar. The 200 Bengali that were recently accepted into Rakhine State could not be sent back, and they were harming the locals. Because we felt sorry for the boat people... we lost our homes in our own land. MaBaTha hereby declares that immediate action is needed to make sure those (Rohingya) who are already in Myanmar leave as soon as possible, and future boat people never enter Myanmar's border."[2911]

- The second screenshot below is of the cover of the 13 September 2017 issue of Atumashi, another MaBaTha periodical. The cover photo shows Wirathu preaching at a rally in September 2017, with the title "Will you surrender the great Maungdaw city (to an invasion)?" Articles from this issue, as well as from other issues, are regularly posted as images on Facebook.

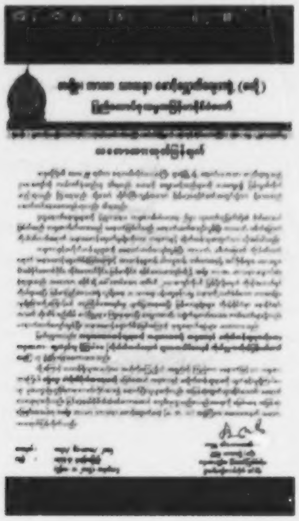
[2907] Photo available here: https://www.facebook.com/1448332835475983/photos/a.1449306808711919.1073741829.1448332835475983/1535200873455845/?type=3&theater (accessed July 2018).

[2908] See also No Hate Speech project, https://www.facebook.com/NoHateSpeechMyanmar/posts/1699017717077829 (accessed July 2018).

[2909] See also No Hate Speech project, https://www.facebook.com/NoHateSpeechMyanmar/photos/a.1547581885554757.1073741828.1547579185555027/1795163[illegible]796150/?type=3&theater (accessed July 2018).

[2910] https://wirathu.blogspot.com (the website was no longer accessible in August 2018). Posts on file with the Mission.

[2911] This statement was still available on Facebook in July 2018. V-0-4



- The extent to which such discourse has become normalised is illustrated by parliamentary discussions on the Rakhine State crisis, in the course of which several members of parliament (mostly notably in the *Amyotha Hluttaw* (the upper house) but also in the *Pyithu Hluttaw* (the lower house) and *Pyidaungsu Hluttaw* repeatedly stressed the need to control illegal immigration and prevent the "Jihad" threat by the "Islamic terrorists".[2912]

1316. The second common narrative is of Muslims, and the Rohingya in particular, as a threat to Burmese racial purity. This theme becomes apparent in messages on population growth among Rohingya, negatively affecting the demographic balance ("incontrollable birth rates", "they breed like rabbits", "extremely large families"), the practice of polygamy and the negative consequences of inter-faith marriage. Many such messages and expressions of hatred focus on the alleged "out-breeding" of Buddhists by Muslims and the dangers of marrying Muslim men, linking it to forcible conversion to Islam and physical abuse. The following examples are typical of these comments:

> *Muslims are like the African carp. They breed quickly and they are very violent and they eat their own kind. Even though they are minorities here, we are suffering under the burden they bring us.* [Wirathu, in a July 2013 interview with the Global Post][2913]

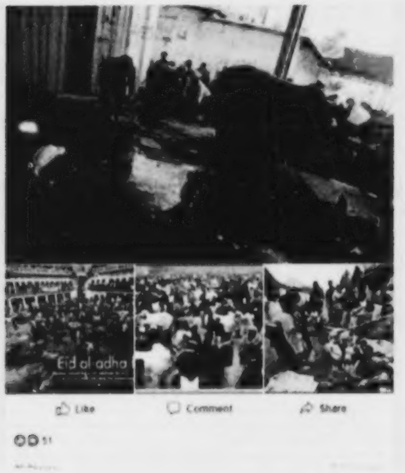
> *It started with a single weed. However, after days and months later, the weed grew uncontrollably, swallowing the other, more precious plants and flowers. Likewise, first, only one or two Bengali arrived. However, because of their plan to marry many wives and have as many children as possible, their population increased disproportionately. [...] If the Myanmar Government and the citizens are not careful, in a few years, Myanmar ethnic people, like the precious flowers will be*

[2912] E.g. the meeting notes from 44th day of the 5th Regular Session at the 2nd Amyotha Hluttaw, on 16 August 2017, Agenda 10: http://www.amyotha.hluttaw.mm/meetings/%E1%81%84%E1%81%84-%E1%80%9B%E1%80%80%E1%80%BA%E1%80%99%E1%80%BC%E1%80%B1%E1%80%AC%E1%80%80%E1%80%BA%E1%80%94%E1%80%B1%E1%80%B7%E1%80%99%E1%80%BE%E1%80%90%E1%80%BA%E1%80%90%E1%80%99%E1%80%BA%E1%80%B8-%E1%81%81%E1%81%86%E1%81%88%E1%81%82%E1%81%80%E1%81%81%E1%81%87, p. 42.

[2913] Tin Aung Kyaw, "Buddhist monk Wirathu leads violent national campaign against Myanmar's Muslims" (Global Post, 21 June 2013).

> *swallowed to extinction by the weed-like Bengali.* [Article by another monk in the 9 June 2017 issue of MaBaTha publication *Aung Zeyathu*][2914]
>
> *Myanmar Buddhists have been accused of committing genocide against the Bengali, of making them go extinct. Actually, try collecting the number of people who died. In total, it was only 200. That race (the Rohingya) will never go extinct. Oh how they breed! (laughs) They are not going extinct, not in Myanmar. They breed so much here.* [Sitagu Sayadaw][2915]

1317. A third narrative represents Muslims, and Rohingya in particular, as a threat to Buddhist religious sanctity. It is often spread through generally disparaging comments on Muslim traditions. Such messages frequently revolve around the idea that Muslim traditions and values are incompatible with, or offensive to, Buddhism. A major example is the vitriol against the slaughtering of cows, suggesting that Muslims are inherently violent because they kill and eat cows. In 2015, the MaBaTha released a statement calling on the government to ban Muslims from slaughtering animals at religious events.[2916] Other examples include disparaging comments about Muslim traditions. About veils worn by women, Wirathu has said that: "Muslims use the robes in suicide bombings, helping men to pretend they are women… It is a security concern and a threat to the sovereignty of the country. We will make that tradition stop."[2917] Below is an example of imagery widely circulated on Facebook with graphic images of cows being slaughtered.



1318. Many such messages or posts under all three narratives elicit profuse reactions and commentary online from sympathizers, often approving them in unambiguous language, including death threats and explicit calls for violence. For example, a 29 September 2017 post from Shwewiki.com featuring a Twitter statement from ARSA elicited the following comments: "Accusations of genocide are unfounded, because those that the Myanmar army is killing are not people, but animals. We won't go to hell for killing these creatures that are not worth to be humans"; "If the (Myanmar) army is killing them, we Myanmar people can accept that… current killing of the Kalar is not enough, we need to kill more!"; "If we can't clear them now, we will eradicate them with a world war."

[2914] See "No Hate Speech Project": https://www.facebook.com/NoHateSpeechMyanmar/posts/1797471910565752.

[2915] Video available on YouTube: https://www.youtube.com/watch?v=FDk4CST48PQ (accessed August 2018).

[2916] Myanmar Now, "Special Report - With official help, Myanmar's radical Buddhists target Muslim-owned businesses", 17 September 2015.

[2917] Hnin Yadana Zaw, A. Slodkowski, "Myanmar radical monk endorses ruling party in election, raps opposition" (Reuters, 4 October 2015).

1319. A vast amount of these messages constitute forms of hate speech that either require prohibition and punishment under international law (because they amount to "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence") or may be prohibited (as necessary in a democratic society to protect the enjoyment of human rights by others). In the context of crimes against humanity, some of the extreme forms of hate speech may also amount to acts of persecution.[2918]

(b) Coordinated hate campaigns and possible links to outbreaks of violence

1320. It is difficult to establish a comprehensive picture of the originators and propagators of hate messages, especially online. Clearly, however, Buddhist charity and welfare groups, movements such as 969 and MaBaTha, and Rakhine nationalist political parties and individuals have waged a campaign for the protection of "race and religion". The use of dehumanising and stigmatising language targeting the Rohingya, and Muslims more generally, has been a key component of such campaigns.

1321. MaBaTha's doctrine, as suggested by the group's name ("Organization for the Protection of Race and Religion"), and as reflected in its publications, social media posts and public sermons, is based on the perceived need to protect, strengthen and spread Buddhism in Myanmar, and the assertion that Islam is in the process of overwhelming and marginalising Buddhism. Initially, MaBaTha focused on a more general anti-Muslim message. Its first major campaign was to propose the "Four Race and Religion Laws" and their passage into law.[2919] MaBaTha propaganda, however, has gradually shifted to a more specific anti-Rohingya and nationalist rhetoric, focusing on the "illegal Bengali" who are invading the country and thus represent a threat to national security.

1322. The MaBaTha rhetoric spread quickly through various channels. MaBaTha produced inflammatory videos, including an infamous re-enactment of the alleged rape and murder of Ma Thida Htwe in May 2012, one of the triggers of the 2012 violence in Rakhine State.[2920] These videos were distributed for free or at very low cost through pagodas, public sermons and other events. MaBaTha views were spread through schools, including monastic schools and Dhamma schools.[2921] The textbooks of the Dhamma schools for Grade 1 to 6 include sections warning against "improper associations" and "marrying the bad", and on the concept of "Buddhist countries".[2922] MaBaTha produced at least 10 different journals and magazines, published novels and nonfiction books, and spread messages through a variety of online platforms, including Facebook, YouTube, Twitter, blogs and websites. MaBaTha's doctrine has been spread in popular culture by a wide network of writers, singers, businesses and other public figures who publicly support MaBaTha and have promoted its messages of hate at public events.

1323. MaBaTha is said to be widely supported among the general population. This may be partly explained by its religious and community services, including blood donation drives, vocational training and charity activities. The messages spread by MaBaTha and associated figures and organizations may also resonate well with the general population due to pre-existing and long-standing prejudices against Muslims, and concerns regarding the fate of Buddhism in the country, illegal immigration and unchecked borders.[2923] MaBaTha certainly has a vast and well-resourced network penetrating the mainstream of Myanmar society through schools, popular culture, charity work, online and traditional communication means, exploiting long-standing prejudices and anxieties in calling on ordinary people to "protect the nation" and its Buddhist nature. MaBaTha and associated individuals have, in the process, succeeded in stigmatising the entire Muslim population as such, the Rohingya in particular. The exact reach of MaBaTha across all these domains, and the role of specific individuals serving it to spread hate speech, merit further careful examination.

[2918] See chapter VIII, section B: Crimes against humanity.

[2919] See chapter V, section B.5: Restrictions affecting private life.

[2920] A copy of the video is on file with the Mission.

[2921] First opened in Myanmar in 2013, Dhamma schools are Sunday schools where children learn about Buddhism.

[2922] For example, lessons taught in the Dhamma school textbook include: "The lion that (wrongly) associated with the fox" (Grade 1), "Propitious conducts of association" (Grade 2), "Propitious way to live" (Grade 2), "What kind of race do you want to be" (Grade 3), "Propitious social conduct" (Grade 4), "Buddhist Countries" (Grade 5 and 6). Copies on file with the Mission.

[2923] See e.g. Matthew Schissler, Matthew Walton, Phyu Phyu Thi, "Threat and virtuous defence: Listening to narratives of religious conflict in six Myanmar cities", M.MAS Working Paper 1.1, University of Oxford, 2015.

1324. Several of the hate speech messages and disinformation from the 2012-2013 period were distributed with the involvement or tacit approval of government or security officials. The MaBaTha campaign around the protection of race and religion has led directly to the adoption of specific legislation affecting the Rohingya (for example, denial of voting rights and the Race and Religion Laws).[2924] From public statements and appearances at public events, rallies and demonstrations, it is clear that a range of politicians (in particular in Rakhine State) and officials within the military and security forces are supportive of MaBaTha's messages and proposed policies. There are also indications of closer links, including of financial donations, private and public sermons in support of the military's operations, and the organization of public rallies and talks in support of the military. There are allegations of personal links between MaBaTha monks and high-level politicians and security forces commanders that warrant further examination.

1325. Whether the hate campaigns against Muslims and Rohingya have led or contributed to actual outbreaks of violence is difficult to establish. Several reports have suggested that outbreaks of violence have been preceded by visits or sermons of monks associated with the MaBaTha, the distribution of anti-Muslim pamphlets and/or increased hate speech on social media.[2925] One example is the violence that broke out in Mandalay at the beginning of July 2014. It resulted in two deaths, many persons injured and significant property damage. It is believed that the violence was triggered by an online news report from 30 June 2014 in which it was alleged that two Muslim teashop owners had raped a Buddhist woman, identifying the teashop by name and including its location and the full names of the alleged perpetrators and the alleged victim. Wirathu reposted the article on his Facebook page with a caption stating that the "Mafia flame (of the Muslims) is spreading" and that "all Burmans must be ready". Violence erupted the following day. The rape story turned out to be false, with the "victim" reportedly admitting that she had fabricated the rape allegations.[2926] In an effort to contain the violence in Mandalay, the government reportedly blocked access to Facebook in the city, acknowledging the role that the platform plays in this regard.[2927] The Chief of the Myanmar Police Force reportedly confirmed that the government blocked Facebook to stop the incitement.[2928]

1326. The Mission received information suggesting that the linkage between offline and online hate speech and real world acts of discrimination and violence is more than circumstantial. Patterns are emerging of hate speech sermons and rhetoric in specific locations that have subsequently experienced violence, and so are indications of peaks of online hate speech around outbreaks of violence. Such patterns and indications need to be comprehensively examined.[2929]

[2924] See chapter V, section B.5: Restrictions affecting private life.

[2925] E.g. Justice Trust Policy Report, *Hidden Hands Behind Communal Violence in Myanmar: Case Study of the Mandalay Riots* (March 2015); B-001.

[2926] Z. Mann, "5 Accused of Sparking Mandalay Riots Sentenced to 21 Years Jail" (The Irrawaddy, 19 March 2015).

[2927] T. McLaughlin, "How Facebook's Rise Fueled Chaos and Confusion in Myanmar" (Wired, 6 July 2018).

[2928] https://burma.irrawaddy.com/opinion/2014/07/04/61420.html; See also Thant Sin, "Who's to blame for Myanmar's spate of sectarian riots?" (Global Voices Online, 12 July 2014).

[2929] With Facebook in the early stages of improving its transparency about country-specific data, the Mission has been unable to obtain comprehensive data from Facebook about the use of Facebook to spread hate speech and incite violence in Myanmar. See further below.

(c) Government and military mirroring and feeding the narrative

1327. The responsibility to address the proliferation of hate speech in the country and the coordinated campaigns of hatred directed at Muslims and Rohingya in particular lies with the government. The response in this regard has been wholly inadequate. In fact, the Myanmar authorities have not only condoned such practices, they have actively participated in and fostered them. This has contributed to and exacerbated a climate in which hate speech thrives and in which individuals and groups may be more receptive to calls of incitement to violence.

1328. The Mission found many deeply problematic public statements from a wide variety of government officials or representatives, including its military and security forces and politicians, and equally problematic statements made in official governmental or military settings. These are indicative of their own deep-rooted discriminatory sentiments towards Muslims, and Rohingya in particular. Below are a few of these statements:

- *Bengali do not have any characteristics or culture in common with the ethnicities of Myanmar. The tensions (in Rakhine State) were fuelled because the Bengali demanded citizenship.* [Senior-General Min Aung Hlaing, Commander-in-Chief of the Tatmadaw, on 19 March 2018][2930]
- *We received news that the Rohingya terrorists, under the name "Rohingya Solidarity Organization" (RSO), are crossing the border with weapons. This is Rohingya infiltration from abroad. Because our troops have received the news in advance, we are going to eradicate*[2931] *them [the Rohingya], until the job is done. I assume that the troops are already eradicating [the Rohingya]. Regarding this issue, we don't want to hear any humanitarian or human rights excuses. We don't want to hear your moral superiority, or so-called peace and loving kindness. (Go and look at Buthidaung, Maungdaw areas in Rakhine State. Our ethnic people are in constant fear in their own land. I feel very bitter about this. This is our country. This is our land.) (I'm talking to you, national parties, MPs, Civil Societies, who are always opposing the president and the government.)* [Zaw Htay, then attached to President Thein Sein's Office, currently Director General in the Office of the State Counsellor and Spokesperson of the Office of the President, on 1 June 2012][2932]
- *There were about five hundred thousand non-religious and evil soldiers, who died in the war. Because of that, the King was not able to sleep at night, since, in Buddhism, killing humans is one of the worst sins. The eight monks who knew about this, told the King "Don't worry, your Highness. Not a single one of those you killed was Buddhist. They didn't follow the Buddhist teachings and therefore they did not know what was good or bad. Not knowing good or bad is the nature of animals. Out of over five hundred thousand you killed, only one and a half were worth to be humans. Therefore it is a small sin and does not deserve your worry.* [Sitagu Sayadaw, one of Myanmar's most revered monks, on 30 October 2017, at the Bayintnaung military garrison and military training school in Thandaung, Karen State][2933]

[2930] The statement in English posted on Senior-General Min Aung Hlaing's website and Facebook has since been deleted, following the United Nations Secretary-General Antonio Guterres' public condemnation of the remark on 26 March 2018 (see https://www.un.org/press/en/2018/sgsm18957.doc.htm). The article in Myanmar language remained available on this personal website (https://www.seniorgeneralminaunghlaign.com.mm), last accessed by the Mission in July 2018.

[2931] The Myanmar word "Chay Mhone" meaning "completely destroy" is usually used in the context of fighting an enemy. To replicate the strong tone used in the passage, the word is translated here as "eradicate".

[2932] Online on Facebook, under the account Hmuu Zaw; V-045.

[2933] He recounted a passage from the 5th century Buddhist chronicle Mahavamsa, in which eight monks visited King Dutthagamani, who was suffering from deep remorse after having led a war in which many people were killed. The sermon was given to a military audience and live-streamed on Facebook on 30 October 2017, soon after the "clearance operations" began: https://www.facebook.com/sitagulivedhamma/videos/705111109681007/.

- *I won't say much, I will make it short and direct. Number one, shoot and kill them! (the Rohingya). Number two, kill and shoot them! (the Rohingya). Number three, shoot and bury them! (the Rohingya). Number four, bury and shoot them! (the Rohingya). If we do not kill, shoot, and bury them, they will keep sneaking into our country!* [Nay Myo Wai, Chairman of the Peace and Diversity Party, on 27 May 2015 in Bo Sein Menn football ground in Bahan township, Yangon][2934]

- *They are very dirty. The Bengali/Rohingya women have a very low standard of living and poor hygiene. They are not attractive. So neither the local Buddhist men nor the soldiers are interested in them.* [Aung Win, Arakan National Party's MP and Chairman of Rakhine Investigation Committee, on 7 November 2016 in interview with BBC (responding to allegations of large-scale rape and sexual violence against Rohingya women)][2935]

- *In reality, Rohingya are neither "Myanmar People" nor Myanmar's ethnic group. You will see in the photos that their complexion is "dark brown". The complexion of Myanmar people is fair and soft, good looking as well. (My complexion is a typical genuine one of a Myanmar gentleman and you will accept that how handsome your colleague Mr. Ye is.) It is quite different from what you have seen and read in the papers. (They are as ugly as ogres.)* [Ye Myint Aung, Myanmar Consul-General for Hong Kong and Macau (subsequently promoted to become Myanmar's Ambassador to the United Nations in Geneva), 9 February 2009 in a letter to all heads of Mission, Consular Corps, Hong Kong and Macau SAR][2936]

- *In fact, extremists, terrorists, ultra-opportunists and aggressive criminals can be likened as fleas that we greatly loathe for their stench and for sucking our blood. Those human fleas are destroying our world by killing people and harming others' sovereignty. Likewise, our country is also facing the danger of the human fleas. A flea cannot make a whirl of dust, but they are trying to combine with each other to amass their force. And they are trying to disintegrate our unity and strength in many ways, by waging armed attacks, spreading rumours and performing subversive activities. We should not underestimate this enemy. At such a time when the country is moving toward a federal democratic nation, with destructive elements in all surroundings, we need to constantly be wary of the dangers of detestable human fleas.* [Op-Ed column published in the Global New Light of Myanmar, a government newspaper, 26 November 2016][2937]

- *Today, the Union Government and the citizens collectively need to have a decisive stand on the issue of Bengali Muslims. We cannot afford to waste time. As long as we have our sovereignty, we do not need to care about any pressure… If we do not courageously solve these problems, which we have inherited from several previous generations…we will go down in history as cowards. For our citizens, for the maintenance of Buddhism, for the protection of our culture, it is now time to sacrifice. […] Although Hitler and Eichmann were the greatest enemies of the Jews, they were probably heroes to the Germans. America had to drop nuclear bombs on Hiroshima and Nagasaki. Why? If inhumane acts are sometimes permitted to maintain a race, a country and the sovereignty… our endeavours to maintain the Rakhine race and the sovereignty and longevity of the Union of Myanmar cannot be labelled as inhumane.* [Editorial in the Rakhine Nationalities Development Party (RNDP) magazine "Toe Thet Yay" (Towards Development), November 2012][2938]

[2934] Special Rapporteur on the situation of human rights in Myanmar, Special Rapporteur on minority issues, and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Urgent Appeal UA MMR 7/2015, 7 July 2015 (https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=20947).

[2935] J. Fisher, "Muslim civilians 'killed by Burmese army'" (BBC News, 7 November 2016).

[2936] A copy of the letter is on file with the Mission; V-046.

[2937] Khin Maung Oo, "A Flea Cannot Make a Whirl of Dust, But" (The Global New Light of Myanmar, 26 November 2016).

[2938] A copy of the magazine is on file with the Mission.

- *As a matter of fact, affairs in northern Rakhine are not concerned with racial and religious conflicts. It is the sole affair which offends the sovereignty of Myanmar and trespasses Myanmar territory. Simultaneously, Rakhine nationals are not the aggressive ones towards foreigners who profess other religions. They have been living together with Islamists Kamans for years. The government is responsible for solving any problems of offending the country's sovereignty, threatening its populace's lives and property, violating rule of law and causing instability. In other words, the thorn has to be removed as it pierces.* [Op-Ed column published in the Global New Light of Myanmar, a government newspaper, on 31 October 2016][2939]
- *Wirathu's sermons are about promoting love and understanding between religions. It is impossible he is inciting religious violence.* [Sann Sint, USDP Religious Affairs Minister, in an interview with Reuters in June 2013][2940]
- *How can it be ethnic cleansing? They are not an ethnic group.* [Win Myaing, Rakhine State Government Spokesman, in his interview with Reuters in May 2013][2941]

1329. A systematic analysis of statements and communications from government and security sector officials and of those in official settings indicates that – while mostly using less inflammatory language – they mirror and promote the same narratives espoused by MaBaTha and others. The Mission has undertaken an in-depth examination of the communications issued by key government institutions in the months following the August 2017 events in Rakhine State. These include the official Facebook page of the Office of the Commander-in-Chief, Senior-General Min Aung Hlaing (2.9 million followers); the official State Counsellor's Information Committee Facebook page (almost 400,000 followers); the Senior-General Min Aung Hlaing's official Facebook page (1.4 million followers); and the official Ministry of Information Facebook page (1.3 million followers).[2942]

1330. The Mission's first finding is that the Government goes to great lengths to avoid using the term "Rohingya". The narrative that there are no Rohingya in Myanmar is actively fed and repeated continuously. For example, on 1 September 2017, the Commander-in-Chief Senior-General Min Aung Hlaing stated: "so we openly declare that 'absolutely, our country has no Rohingya race'".[2943] While the Mission is aware that the history of the Rohingya in Rakhine State is contested, simplistic statements such as these, without providing a nuanced historical perspective, feeds the narrative that the Rohingya do not belong in Myanmar. It denies their right to self-identification and contributes to their stigmatisation and marginalisation. Moreover, Senior-General Min Aung Hlaing draws a direct, and deeply erroneous, consequence from his own statement: that the Tatmadaw does not need to protect the Rohingya, as it would other communities in the country. The related consequence is that the Tatmadaw must protect other parts of the Myanmar population, including from the Rohingya. For example, this is demonstrated in a post from 16 October 2017: "The Senior General said he would like to note at first that those Bengali are not Myanmar ethnics. […] Therefore, the Tatmadaw needs to take security measures for local people" and "Bengali are not ethnic of Myanmar. Rohingya is not included on the list of Myanmar's ethnics. […] The Tatmadaw on its part will give priority to safeguarding the security and interest of the ethnics while protecting the citizens residing in Myanmar".[2944]

[2939] Khin Maung Oo, "The Thorn Needs Removing If It Pierces!" (The Global New Light of Myanmar, 31 October 2016).

[2940] A. Marshall, "Special Report: Myanmar gives official blessing to anti-Muslim monks" (Reuters, 27 June 2013).

[2941] J. Szep, "Special Report: In Myanmar, apartheid tactics against minority Muslims" (Reuters, 15 May 2013).

[2942] The pages of the Office of the Commander-in-Chief, Senior-General Min Aung Hlaing and of Senior-General Min Aung Hlaing himself were deactivated by Facebook on 27 August 2018 (see Facebook Newsroom, "Removing Myanmar Military Officials From Facebook", https://newsroom.fb.com/news/2018/08/removing-myanmar-officials/). All posts relied on in this report are on file with the Mission.

[2943] Post on file with the Mission.

[2944] Note that Rohingya are not "citizens of Myanmar". Post on file with the Mission.

Such statements reveal a disturbingly discriminatory understanding of the role of the Myanmar security forces and a flagrant disregard for one of the core principles of international human rights law, non-discrimination and equal protection.

1331. The distinction between groups who belong in Myanmar ("ethnics") and others also arises in the way the Myanmar authorities refer to victims and civilians who are affected by the violence. First, the Mission found almost no references to Rohingya (or "Bengali") as potential victims. Even when the Tatmadaw confirmed the extrajudicial killing of 10 men found in a mass grave in Inn Din, they referred to the victims as "Bengali terrorists".[2945] The over 700,000 Rohingya who fled the violence to Bangladesh, and their suffering, were also rarely mentioned or acknowledged. They were referred to in convoluted phrases like "those who fled to the other country".[2946] In fact, Rohingya victims were often portrayed collectively as perpetrators and "terrorists" (see below). In contrast, victims from other ethnic groups and religions (including Rakhine, Hindus and Mro,) were frequently mentioned and humanized through interviews, photos and videos, which has led to widespread expression of sympathy on social media for these victims.[2947]

1332. The way in which the Myanmar authorities presented the return of eight Hindu women from Bangladesh to Myanmar, for instance, showed significant bias against the Rohingya. Photos, videos, interviews with, and stories about these women were promoted and shared by all official accounts. The women alleged that their husbands were killed by ARSA, that they were kidnapped and told to convert to Islam, or be killed. Accepting these claims at face value[2948], the extreme focus on this one incident in a context where other allegations and severe incidents received no coverage or acknowledgement served the purpose of painting Islam as a violent religion and Rohingya as trying to islamise Myanmar. A video showing interviews with the Hindu women was posted on the official Facebook page of the Office of the Commander-in-Chief with the caption: "Voices of the survivors about the mass murder of Hindus […] by Bengali terrorists". [2949] Comments under the video included: "Stay strong, my sister. These inhuman followers of the evil-religion will disappear from our land one day"; "Kill all these Kway Kalar. Motherfucking shit-Ro animals".[2950]

1333. Myanmar authorities actively associated Rohingya identity with terrorism. Rohingya are typically only referred to as terrorists or suspected terrorists, often in sweeping phrases implying that the entire group is terrorist or violent in nature. This narrative preceded the emergence of ARSA. For example, in the 23 May 2016 issue of Myawady Daily, a newspaper run by the Tatmadaw, an article stated, "Throughout successive eras, several racial and religious conflicts have broken out in Rakhine State, due to the 'Khoe Win Bengali' [Bengali who entered the country by stealth]. The attack on the race happened again in 2012 in Rakhine State, between the 'Khoe Win Bengali', who are not citizens, and the ethnic people. This attack was disguised as a religious conflict."[2951] In the concluding paragraph of the same article, the author claimed that "the issue of 'Anout Ta Kha' [West Gate]… is the concern of every Myanmar citizen".

[2945] Post on file with the Mission.

[2946] Post on file with the Mission.

[2947] For coverage on Hindu victims, see e.g. Information Committee posts "Interview with Hindus who fled from their villages" on 1 September 2017 (https://www.facebook.com/InfomationCommittee/posts/788602791312829) and "The words of bereaved families of Hindus killed by ARSA terrorists" on 27 September 2017 (https://www.facebook.com/InfomationCommittee/posts/807089859464122), as well as posts of the Office of the Commander-in-Chief no longer available on Facebook but on file with the Mission. Coverage on Mro victims, e.g. Information Committee post "ARSA extremist terrorists continue setting houses on fire" of 30 August 2017 (https://www.facebook.com/InfomationCommittee/posts/788328661340242).

[2948] See chapter V, section D.1.c: The Arakan Rohingya Salvation Army.

[2949] Post on file with the Mission.

[2950] Post on file with the Mission.

[2951] See No. 35, Vol. 6 of Myawady Daily: http://www.myawady.net.mm/index.php/download/category/35-%E1%81%85-%E1%81%82%E1%81%80%E1%81%81%E1%81%86?download=702:2352016&start=20, p. 13.

1334. This narrative of the whole Rohingya population being "terrorists" and inherently violent was reinforced in the aftermath of the ARSA attacks. When discussing the crisis in Rakhine State, the Tatmadaw generally referred to "extremist Bengali terrorists" and on occasion to "ARSA extremist Bengali terrorists" (sometimes even just to "Bengali"). It is important to note the systematic inclusion of the word "Bengali". In relation to other insurgencies or armed conflicts in the country, the military never adds an ethnic affiliation when referring to its opponent or an alleged perpetrator. For example, in relation to the Kachin Independence Army, it refers to "KIA insurgents" or "KIA terrorists" but not to "Kachin insurgents" or "extremist Kachin terrorists". Similarly, for the Arakan Army, it does not refer to "extremist Rakhine terrorists" but to "AA insurgents" or "AA terrorists". Also notable is that, in the first few days following 25 August 2017, the official Facebook pages of the State Counsellor's Office (Information Committee) and the Office of the Commander-in-Chief used "extremist Bengali terrorists", but in the later days added the prefix ARSA, "ARSA extremist Bengali terrorists".[2952] This narrative is further fuelled by the authorities' use of emotive and divisive language, such as "blood-thirsty Bengali terrorists"[2953], and posting the pictures of arrested "terrorists".[2954]

1335. This tendency towards generalising statements in referring to the Rohingya and a manifest lack of interest in making appropriate distinctions between ARSA elements and civilians is also illustrated by the publication in the Global New Light of Myanmar, a government newspaper, of the names and photographs of approximately 1,300 so-called "ARSA terrorists", including children.[2955] This list was published without any form of due process and without offering any supporting evidence or information about any verification measures taken, putting the lives of both the individuals listedand their families at risk. The list was also posted by the Office of then President Htin Kyaw.[2956]

1336. The Commander-in-Chief Senior-General Min Aung Hlaing has made repeated references to the so-called "Alelthankyaw crisis" of 1942 in discussing what he calls "the Bengali problem". On 1 September 2017, at the height of the "clearance operations" in Rakhine State, in a post entitled "Entire government institutions and people must defend the country with strong patriotism"[2957], he started his statement as follows: "Rakhine ethnics lost their land in the Alelthankyaw crisis that broke out in Rakhine State in 1942 in which Bengali attacked, murdered and coerced them into leaving their homes. We will never let such terrible occurrence happen again. The Tatmadaw will fully safeguard the sovereignty of Myanmar, without allowing any damage to it." The post continues by detailing the alleged atrocities from 1942, before stating: "The Bengali problem was a long-standing one which has become an unfinished job despite the efforts of the previous governments to solve it. The government in office is taking great care in solving the problem." Reference to the same events was regularly included in later posts as well, including on 10 and 20 September 2017.[2958] Regardless of the one-sided representation of the 1942 events[2959], the Commander-in-Chief's explicit link between the 2017 "clearance operations" in

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[2952] Posts on file with the Mission.

[2953] https://scontent-mxp1-1.xx.fbcdn.net/v/t1.0-9/33333112_1702663973187794_2065212338264342528_n.jpg?_nc_cat=0&oh=442ac7b0455213ea2ded951f1d9d35d8&oe=5B9F1BA8, photo accompanying a post by the Office of Commander-in-Chief Facebook page (on file with the Mission).

[2954] Photo accompanying a post by the Information Committee Facebook page: https://www.facebook.com/InfomationCommittee/posts/855052794667828 (accessed July 2018).

[2955] The Global New Light of Myanmar, issues of 18, 19, and 20 January 2018.

[2956] http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-8356 (accessed July 2018).

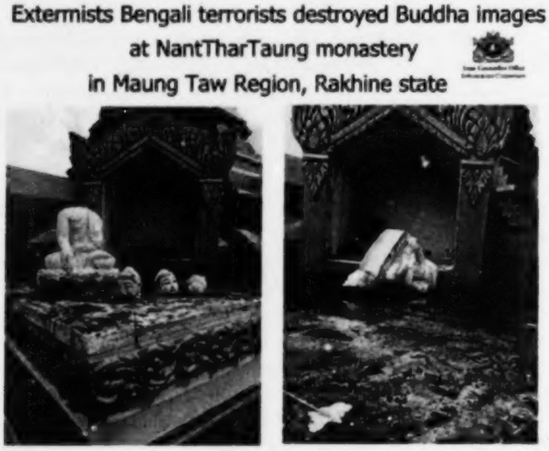
[2957] Post on file with the Mission.

[2958] Posts on file with the Mission.

[2959] See for a study on the 1942 events: J. Leider, "Conflict and Mass violence in Arakan (Rakhine State) – The 1942 Events and Political Identity Formation", in *Citizenship in Myanmar*, A. South, M. Lall (eds.), (Chiang Mai University Press, 2018), pp. 193-221, noting that "the waves of communal clashes of 1942 have been poorly documented, sparsely investigated and rarely studied" (p. 194) and that "the absence of a factual master narrative, which both Buddhists and Muslims could have agreed upon, barred the emergence of consensual interpretations of the events" (p. 211). The events occurred during World War II when the Rohingya supported the British and the Rakhine supported the Japanese. The Tatmadaw was founded during this period with the support of the Japanese Army.

Rakhine State and an "unfinished" "Bengali problem" dating back to 1942 reveals that the 2017 military operation was not (only) to respond to the ARSA attacks and to quell the threat posed by this group, as has been claimed. It rather speaks to a broader objective on the part of the Tatmadaw with historical roots and reinforces the narrative that *all* "Bengali" are a problem and that a distinction between "terrorists" and civilians/victims is not relevant.

1337. Most of the Myanmar authorities' posts and communications also directly feed the narratives of illegal immigration and Islamic threat, as espoused by MaBaTha affiliated groups and individuals, and as widely promoted in Myanmar, both online and through other sources. The narrative representing the Rohingya as illegal immigrants from Bangladesh is promoted not only by the persistent use of the word "Bengali", but also through the focus on citizenship and residence verification in the context of resettlement discussions and speculation that the actual numbers of refugees must be far lower. These messages are reinforced by government accounts that highlight the damage to Buddhist monasteries, and efforts of the military to cooperate with local monks to rebuild damaged monasteries.[2960] For example:



Extermists Bengali terrorists destroyed Buddha images
at NantTharTaung monastery
in Maung Taw Region, Rakhine state

1338. The motto of the Ministry of Labour, Immigration and Population is: "The earth will not swallow a race to extinction but another race will".[2961] The same theme appears throughout official communications from the Myanmar authorities. For example, in a 21 September 2017 post on Facebook (entitled "Gallant efforts to defend the HQ against terrorist attacks and brilliant efforts to restore regional peace, security are honoured")[2962], Commander-in-Chief Senior-General Min Aung Hlaing states that, "the Bengali population exploded and the aliens tried to seize the land of local ethnics" and "in checking the cases in which Bengali trying to sneak into the country through various means were seized involvement of some officials were found. Race cannot be swallowed by the ground but only by another race. All must be loyal to the State in serving their duties, so that such cases will never happen again." On 11 October 2017, he stated, "…not accepting the process means that there are lots of those born to illegal migrants and entry of illegal migrants. There are many Bengali families each of which has about 40 members".[2963] The same post also argues that "the native place of Bengali is really Bengal. Therefore, they might have fled to the other country with the same language, race and culture as theirs by assuming that they would be safer there." The theme of Rohingya not belonging in Myanmar was made explicit in a March 2018 statement, in which Min Aung Hlaing said that the "Bengali do not have any characteristics or culture in common with the ethnicities of Myanmar. The tensions (in Rakhine State) were fuelled because the 'Bengali' demanded citizenship."[2964]

[2960] See, for example, the following posts from Information Committee: https://www.facebook.com/InfomationCommittee/posts/786691611503947; https://www.facebook.com/InfomationCommittee/posts/790059134500528; https://www.facebook.com/InfomationCommittee/photos/a.639477959558647.1073741828.639456206227489/787636464742795/?type=3&theater (accessed July 2018).

[2961] This motto, in Myanmar language, can be seen on the front page of the Ministry's website: http://www.mip.gov.mm/ (accessed August 2018).

[2962] Post on file with the Mission.

1339. The impact of such public statements, closely mirroring and fuelling prevalent discriminatory narratives and sentiments, is compounded by two additional factors. First, a constant stream of misinformation about events in Rakhine State downplays the seriousness of the situation and misleads domestic audiences. Allegations of serious human rights violations by the Myanmar security forces are systematically denied[2965], while the Government spreads demonstrably false information about the situation in Rakhine State. For example, it has regularly been suggested that the numbers of Rohingya who fled from Myanmar were not high, or that the Rohingya left Myanmar in an orderly fashion out of their own will. For example, on 11 October 2017 the Commander-in-Chief, Senior-General Min Aung Hlaing, posted: "there is exaggeration to say that the number of Bengali fleeing to Bangladesh is very large". At the time more than 600,000 Rohingya had fled to Myanmar in a period of six weeks. On 12 October 2017, he posted "documentary photos show that those Bengali conveniently left for Bangladesh but they did not flee from Myanmar in panic" and that "they had fled to Bangladesh with the same language, race and culture as theirs. There are also some Bengali villages whose people did not flee as they did not get involved in the attacks." On 15 November 2017, he informed his followers that the number of "Bengali" leaving Myanmar between 25 August and 5 September 2017 (the official end date of the "clearance operation") was "very small" and that "more" left thereafter. He explained that the main reason for the exodus was that "ARSA extremist Bengali terrorists" fled out of fear of a counterattack and took their families with them. He added, "other Bengali were also threateningly forced to flee to Bangladesh, while some were persuaded to live in a third country".

1340. The State Counsellor's Information Committee similarly dismissed allegations of sexual violence as "rumours" under a banner stating "fake rape".[2966] The Information Committee has repeatedly dismissed reports of serious human rights violations as "fake news".[2967] The State Counsellor, Daw Aung San Suu Kyi, referred to an "iceberg of misinformation" about the situation in Rakhine State.[2968] Some of the photographs shared by her Information Committee to advance the narrative that Rohingya were burning their own villages were demonstrated to have been staged.[2969] Similarly, the Tatmadaw's Directorate of the Public Relations and Psychological Warfare, in a 2018 publication "Myanmar Politics and the Tatmadaw", used photographs from Tanzania and Bangladesh, which it claimed showed large numbers of "Bengalis" entering Rakhine State from Bangladesh, to illustrate its allegations against the "Bengalis".[2970]

1341. A second aggravating factor is the explicit call for nationalist and patriotic action that accompanies such narratives and misinformation. The call suggests that the country is under siege, and at least implicitly encourages citizens to take action in their own hands. During his meeting with the ethnic people in Rakhine State on 22 September 2017, Senior-

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[2963] Post on file with the Mission.

[2964] See also above.

[2965] Several posts on file with the Mission.

[2966] See detailed discussion in chapter X, section B: History and climate of impunity in Myanmar.

[2967] E.g. this post about alleged mass graves: https://www.facebook.com/InfomationCommittee/posts/869272283245879 (accessed August 2018).

[2968] https://www.facebook.com/InfomationCommittee/posts/790712274435214 (accessed August 2018).

[2969] J. Head, "Rohingya crisis: Seeing through the official story in Myanmar" (BBC News, 11 September 2017).

[2970] P. McPherson, "Exclusive: Fake photos in Myanmar army's 'True News' book on the Rohingya crisis" (Reuters, 30 August 2018). The publication is on file with the Mission.

General Min Aung Hlaing expressed his regrets for "the shortage of the security forces in giving sufficient protection". He added that "public cooperation and participation is important in taking security measures. Local ethnics can strengthen the defence prowess by living in unity and by joining hands with the administrative bodies and security forces in oneness." [2971] On 27 October 2017, in another Facebook post entitled "every citizen has the duty to safeguard race, religion, cultural identities and national interest", Commander-in-Chief Min Aung Hlaing stated that "all must strive for the positive progress for the flourishing of good characteristics and deeds and preserve the excellent characteristics of the country. All the people living in the country must strive for the good of the country with patriotism. Additionally, the national defence duty falls on every citizen." On 21 May 2018, Min Aung Hlaing reiterated this point, stating that "nationalistic spirit is the safeguarding of the own country and citizens forever... Only when youths with a wider knowledge prevent all the acts which undermine the patriotic spirit and nationalistic spirit, will the nationalistic defence capability of the nation rise and will Myanmar be existence as long as the world [exists]".[2972]

(d) The role of Facebook and other social media platforms

1342. As elsewhere in the world, the Internet and social media platforms have enabled the spread of this kind of hateful and divisive rhetoric. The Myanmar context is distinctive, however, because of the relatively new exposure of the Myanmar population to the Internet and social media. Messages portraying Rohingya as violent, dishonest, anti-Bamar, anti-Buddhist, illegal immigrants and/or terrorists of the kind set out above are particularly widespread on social media. Death threats, incitement to violence and discrimination, and online harassment are common features as well, not only against the Rohingya themselves but also against moderate commentators, human rights defenders and ordinary people who have views that differ from the official line.

1343. Prior to 2011, the military regime heavily censored the media and the Internet was only available to a select few, as it was prohibitively expensive. This changed with the democratic reform process and the liberalisation of the telecommunications industry, which led to a rapid increase in the Myanmar population's access to mobile telephony and the Internet.[2973] While mobile cellular subscriptions per 100 inhabitants stood at 1.18 in 2010, it had reached 55.91 by 2014 and 95.65 by 2016. Similarly, mobile broadband subscriptions per 100 inhabitants rose from 0.02 in 2011 to 56.30 in 2016.[2974] Such increased access to information and means of communication is one of the most tangible benefits of the democratisation process. It has undoubtedly contributed to greater enjoyment of the rights to freedom of expression, association and peaceful assembly, while also enabling far wider and faster dissemination of hate speech.

1344. With access to the Internet came access to social media platforms. While statistics on social media use in Myanmar are not readily available, Facebook is clearly by far the most common social media platform in use in Myanmar.[2975] Although Facebook was available and used before, a specific Myanmar version was launched in 2015.[2976] Experts have estimated the number of active Facebook users in Myanmar at approximately 20 million.[2977] Mobile networks offer specific deals privileging access to Facebook.[2978] In July 2016, Facebook and Myanmar Post and Telecommunications jointly launched "Free Basics" and "Facebook Flex" in Myanmar.[2979] Facebook Flex is a product that enables subscribers to have a text-only version of Facebook without incurring data charges. Free Basics provided access to basic services without data charges on their mobile phones, with the stated intention of providing people with an opportunity to "experience" the value and relevance of connectivity to the Internet for free but with access only to a limited number of sites. Free Basics was discontinued in Myanmar in September 2017. Between July 2016 and September 2017, people in Myanmar could use it to access a basic version of Facebook and a number of utilitarian applications and content sources.[2980] It has been reported that, when people buy a smartphone, especially when they are unfamiliar with the Internet, shopkeepers offer to create and install a Facebook account for the customer.[2981]

[2971] Post on file with the Mission.

[2972] Post on file with the Mission.

[2973] In 2014, Telenor Myanmar Limited (TML) from Norway and Ooredoo Myanmar Limited (OML) from Qatar received licenses to compete with the government-owned Myanmar Posts and Telecommunications (MPT), which had been the sole operator. In 2017, a fourth license was issued to Telecom International Myanmar Company Limited (MyTel), a consortium of Myanmar companies and Viettel from Vietnam. It has been reported that Vietnam's Viettel – wholly owned by the country's Ministry of Defence – owns 49 per cent of MNTC, and that Star High Public Company, which has another 28 per cent, is owned by the Myanmar army through a holding company, Myanmar Economic Corporation. This makes MyTel essentially a joint venture between the militaries of Myanmar and Vietnam. See e.g. A. Burkitt-Gray, "Military dominates Myanmar's fourth telecom licence" (Capacity Media, 13 January 2017). MyTel phone numbers start with 0-969.

[2974] K-074.

[2975] It is suggested that Facebook enjoys a more than 90 per cent share among social media platforms in Myanmar, and that this has been so since 2012. E.g. http://gs.statcounter.com/social-media-stats/all/myanmar.

1345. The relative unfamiliarity of the population with the Internet and with digital platforms and the easier and cheaper access to Facebook have led to a situation in Myanmar where Facebook is the Internet. It has become the main mode of communication among the public and a regularly used tool for the Myanmar authorities to reach the public. The President, the State Counsellor, the Commander-in-Chief, the Ministry of Information, the Tatmadaw and other key governmental institutions rely on Facebook to release news and information. Media outlets like Eleven Media (17 million followers), 7 Days News (20.8 million followers), The Irrawaddy (12 million followers), Mizzima (12 million followers) and BBC Burmese (13.9 million followers) use Facebook as a main way of disseminating articles. For many people, Facebook is the main, if not only, platform for online news and for using the Internet more broadly. In a context of low digital and social media literacy, the Government's use of Facebook for official announcements and sharing of information further contributes to users' perception of Facebook as a reliable source of information.

1346. Facebook serves to connect people, often cited by the company as its main aim, and it facilitates communication and access to information. It can and has been used in many ways to enhance democracy and the enjoyment of human rights. However, the wide reach, relative user anonymity, and difficulty of monitoring or removing posts also make it a suitable instrument to spread messages that may constitute hate speech, including advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. It is unsurprising that propagators of hate speech resort to Facebook to wage hate campaigns, amplify their message, and reach new audiences. In addition to hate speech, Facebook has also been widely used to spread misinformation, including by government officials and the Tatmadaw, as illustrated above.

[2976] Submission from Facebook. Another popular platform for social messaging in Myanmar is Viber, with an estimated 18 million users in 2017. See Digital in Asia, "Myanmar 33 million mobile users, smartphone usage 80%" (9 January 2017).

[2977] B-005; see also J. Russell, "Myanmar group blasts Zuckerberg's claim on Facebook hate speech prevention" (Tech Crunch, 6 April 2018). In June 2016, the number of users was believed to have reached 10 million; see C. Trautwein, "Facebook racks up 10m Myanmar users" (Myanmar Times, 13 June 2016).

[2978] For example, MyTel offers to use Facebook to register users' SIM cards and in exchange users receive six months of free data for exclusive use on Facebook (https://www.facebook.com/mytelmyanmar/posts/394974640914463). TML has packages that offer 1GB free for exclusive use on Facebook when users recharge a certain amount (https://www.telenor.com.mm/en/offer/facebook-free; https://www.telenor.com.mm/en/offer/everyday-fb-bonus) and Facebook-exclusive data rates that are cheaper than ordinary data plans (https://www.telenor.com.mm/en/offer/myanmar%E2%80%99s-cheapest-facebook-pack). Also Ooredoo and MPT have cheaper data plans for social media, including Facebook (http://mpt.com.mm/en/home/mobile-services/data/; http://www.ooredoo.com.mm/en/Personal/Promotions/2017/08/01/Facebook-Plus-Pack.aspx).

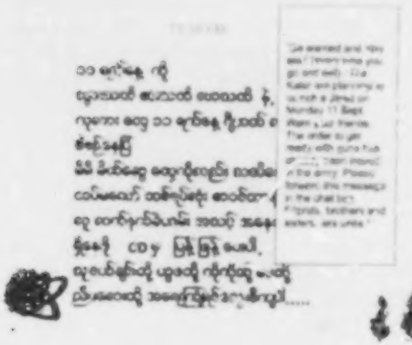
[2979] Submission from Facebook.

[2980] Submission from Facebook.

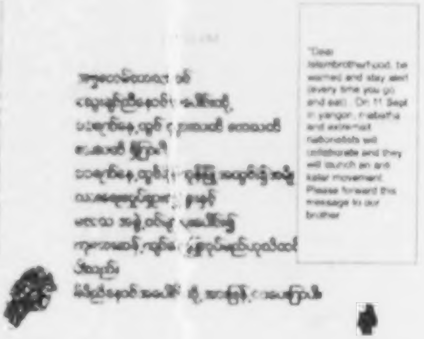
[2981] B-004, B-005.

1347. Allegations that posts and messages on Facebook have increased discrimination and violence in Myanmar are rife, in particular where the posts and messages are framed in terms of an alleged Islamic "takeover" or Muslims harming Buddhists (especially women). For example, posts early in 2012 about the alleged rape and murder by Rohingya men of a Buddhist woman were reportedly shared widely and are considered to have contributed to the tension and violence in Rakhine State in that year.[2982] Similarly, posts about an alleged rape of a Buddhist woman by Muslims in Mandalay are considered to have led to the riots there in 2014.[2983]

1348. Another example is the instigation of communal unrest in early September 2017, in the midst of the crisis in Rakhine State, through the parallel distribution of similar but conflicting chain messages on Facebook Messenger to Muslim and Buddhist communities. Each chain message stated that the other group was preparing for major violence on 11 September and encouraged the recipient to get ready to resist. Local civil society groups reported that the messages had a countrywide reach, caused widespread fear and at least three violent incidents.[2984] Below is a screenshot of the messages taken from the open letter sent by Myanmar civil society organizations to the CEO of Facebook.[2985] The first was sent to Buddhists and the second to Muslims.



"Be warned and stay alert! (every time you go and eat). The Kalar are planning to launch a Jihad on Monday 11 Sept. Warn your friends. The order to get ready with guns has already been issued in the army. Please forward this message in the chat to friends, brothers and sisters, and uncle."



"Dear Islam brotherhood, be warned and stay alert (every time you go and eat). On 11 Sept in yangon, mabatha and extremist nationalists will collaborate and they will launch an anti kalar movement. Please forward this message to our brother."

1349. Facebook's Community Standards, to which each user must agree, include sections on hate speech and violence, and set out the company's approach to fake accounts and false news. According to these standards, Facebook will remove content that violates its policies. Users can report such content to Facebook for review by its moderators. The company also uses technology to identify certain types of content that violate its standards. In November 2015, Facebook launched an illustrated Myanmar-language version of its Community Standards. Facebook also undertook a number of other initiatives to educate people in Myanmar about these standards.[2986]

1350. However, in an open letter to Facebook, six local civil society organizations working on the issue of hate speech highlighted the company's ineffective content moderation. The organizations argued that Facebook moderation revealed "an over-reliance on third parties, a lack of a proper mechanism for emergency escalation, a reticence to engage local stakeholders around systemic solutions and a lack of transparency".[2987] Concerns were also raised that Facebook does not have enough content moderators who understand Myanmar language and its nuances, as well as the context within which comments are made; that Facebook's technology is not compatible with the different Myanmar language fonts; and that Facebook has a strong, if not unique, focus on Myanmar language and Burman culture.[2988]

[2982] Fn 101, see also chapter V, section C.1: Violence in 2012 – Emblematic incidents.

[2983] See above.

[2984] Open letter from Myanmar civil society organizations to Mark Zuckerberg, CEO of Facebook (5 April 2018), available here: https://www.documentcloud.org/documents/4432469-Myanmar-Open-Letter-to-Mark-Zuckerberg.html

[2985] Ibid. Facebook confirmed having removed these messages after they became aware of them.

[2986] Submission from Facebook.

[2987] Open letter from Myanmar civil society organizations to Mark Zuckerberg, CEO of Facebook (5 April 2018), available here: https://www.documentcloud.org/documents/4432469-Myanmar-Open-Letter-to-Mark-Zuckerberg.html

1351. The Mission itself experienced a slow and ineffective response from Facebook when it used the standard reporting mechanism to alert the company to a post targeting a human rights defender for his alleged cooperation with the Mission. The post described the individual as a "national traitor", consistently adding the adjective "Muslim". It was shared and re-posted over 1,000 times. Numerous comments to the post explicitly called for the person to be killed, in unequivocal terms: "Beggar-dog species. As long as we are feeling sorry for them, our country is not at peace. These dogs need to be completely removed." "If this animal is still around, find him and kill him. There needs to be government officials in NGOs." "Wherever they are, Muslim animals don't know to be faithful to the country." "He is a Muslim. Muslims are dogs and need to be shot." "Don't leave him alive. Remove his whole race. Time is ticking." The Mission reported this post to Facebook on four occasions; in each instance the response received was that the post was examined but "doesn't go against one of [Facebook's] specific Community Standards". The Mission subsequently sent a message to an official Facebook email account about the matter but did not receive a response. The post was finally removed several weeks later but only through the support of a contact at Facebook, not through the official channel.[2989] Several months later, however, the Mission found at least 16 re-posts of the original post still circulating on Facebook.[2990] In the weeks and months after the post went online, the human rights defender received multiple death threats from Facebook users, warnings from neighbours, friends, taxi drivers and other contacts that they had seen his photo and the posts on Facebook, and strong suggestions that the post was an early warning. His family members were also threatened. The Mission has seen many similar cases where individuals, usually human rights defenders or journalists, become the target of an online hate campaign that incites or threatens violence.

1352. Facebook has publicly acknowledged that the company had been "too slow" in reacting to the concerns raised by civil society organizations.[2991] In June 2018, Facebook informed the Mission that it was trying to solve two specific problems in Myanmar: hate speech and misinformation as a tool for hate speech.[2992] It stated that it was focusing on overcoming technical challenges (such as the different fonts used in Myanmar language), improving reporting flows (for example, the recent rollout of the ability to report content shared on Facebook Messenger), automation (including exploring the use of artificial intelligence to proactively identify content for review), and misinformation (acting on fake accounts). Facebook also stated it had added more Myanmar language reviewers to handle reports from users across all its services, increased the number of people across the company on Myanmar-related issues, and put in place a special team working to better understand the specific local challenges and build the right tools.[2993] Facebook further announced that it will undertake a comprehensive human rights impact assessment in Myanmar, the findings of which will be made public.[2994]

[2988] B-005, K-101.

[2989] K-104.

[2990] After these were brought to Facebook's attention, they were subsequently also removed.

[2991] See e.g. Facebook Newsroom, "Removing Myanmar Military Officials From Facebook", https://newsroom.fb.com/news/2018/08/removing-myanmar-officials/). See also statements by Mark Zuckerberg, before the United States Congress: "We've been too slow to deal with the hate and violence in places like Myanmar […]. The challenges we face in a country that has fast come online are very different than those in other parts of the world, and we are investing in people, technology, and programs to help address them as effectively as possible." (https://docs.house.gov/meetings/IF/IF00/20180411/108090/HHRG-115-IF00-Wstate-ZuckerbergM-20180411.pdf)

[2992] Submission from Facebook.

[2993] K. Roose, P. Mozur, "Zuckerberg Was Called Out Over Myanmar Violence. Here's His Apology" (The New York Times, 9 April 2018).

1353. In 2018, Facebook designated MaBaTha and the monks Wirathu, Thuseitta and Parmakkha as hate figures and organizations.[2995] They were no longer allowed a presence on Facebook, and any other profile, page, group or piece of content that praises or supports them would be removed. Since April 2018, the Mission noted increased efforts by Facebook to remove hate speech from its platform faster, including following alerts by the Mission. On 27 August 2018, Facebook further announced that it had removed a total of 18 Facebook accounts, one Instagram account and 52 Facebook pages, followed by almost 12 million people. It banned 20 individuals and organizations from Facebook in Myanmar, including Senior-General Min Aung Hlaing. It further stated that it had removed "46 Pages and 12 accounts for engaging in coordinated inauthentic behaviour on Facebook", after discovering that "they used seemingly independent news and opinion Pages to covertly push the messages of the Myanmar military".[2996] Importantly, Facebook stated that it had preserved all data and content from these pages.[2997] The removed data and content should be available to properly constituted international and national judicial authorities for accountability purposes, including criminal prosecution of perpetrators of serious human rights violations in Myanmar.

1354. The Mission has no doubt that the prevalence of hate speech in Myanmar significantly contributed to increased tension and a climate in which individuals and groups may become more receptive to incitement and calls for violence. This also applies to hate speech on Facebook. The extent to which the spread of messages and rumours on Facebook has increased discrimination and violence in Myanmar must be independently and thoroughly researched, so that appropriate lessons can be drawn and similar scenarios prevented. Similarly, the impact of the recent measures taken by Facebook to prevent and remedy the abuse of its platform needs to be assessed. The Mission regrets that Facebook has been unable to provide country-specific data about the spread of hate speech on its platform, which is imperative to assess the problem and the adequacy of its response.[2998] It considers it essential that Facebook develop and implement systems to enable this country-specific data to be collected and made available publicly.

(e) Government response

1355. In a context where government officials and Buddhist leaders fail to denounce and address pervasive discrimination and human rights violations that are often State-supported and rooted in law, the haphazard efforts of some authorities to address the most extreme and radical instances of hate speech propagated by MaBaTha and some of its affiliate monks are grossly inadequate.[2999] What is required is a clear, decisive and official reaction.

[2994] Submission from Facebook.

[2995] Submission from Facebook.

[2996] Facebook Newsroom, "Removing Myanmar Military Officials From Facebook", https://newsroom.fb.com/news/2018/08/removing-myanmar-officials/).

[2997] Earlier, in June 2018, Facebook had informed the Mission that its policies did not allow to do so.

[2998] Submission from Facebook; BM-050.

[2999] The Mission took note of some high-level officials occasionally speaking out about specific statements, e.g. on 29 October 2014, when the Ministry of Information released a statement that an article in the MaBaTha journal Aung Zeyathu (no. 44) had been reported by the Myanmar Islamic Religious Organization for falsely portraying Islam, and had been found to be breaching sections 354(d), 362-364 of the Constitution as well as the News Media Act and the Print and Publication Act [Notice No.1-6 (8)/ 2014 (7182)]. On 10 March 2017, Sangha Maha Nayaka Committee (MaHaNa), the Government-appointed body that regulates the Myanmar Buddhist clergy, issued a statement banning Wirathu from preaching countrywide for one year until March 2018, citing the latter's spread of religious hate-speech (see http://www.mahana.org.mm/?p=1351 for the statement.) On 23 May 2017, MaHaNa issued a statement declaring that MaBaTha was not formed in accordance with the Sangha Organization Law and the Sangha Organizational Procedures, and that neither the group nor individuals associated with it can use the full Burmese name it was using and that all of the organization's signboards across the country had to be taken down (see M. Walton, "Misunderstanding Myanmar's Ma Ba Tha" (Asia Times, 9 June 2017)). On 20 July 2018, MaHaNa

A credible government response should begin with its own officials refraining from using hateful and divisive rhetoric[3000], systematically condemning instances of hate speech, countering the prevailing discriminatory narratives about Muslims and Rohingya in particular, and actively promoting messages of tolerance and respect for the human rights of all. The Mission has found no examples of such messages in its analysis of online government posts in the context of the "clearance operations" in Rakhine State. Similarly, while successive Myanmar governments have supported various interfaith gatherings aimed at diffusing tensions between religious groups in Myanmar[3001], they have generally not included dialogue with the Rohingya. To the contrary, some recent events appear to be organized to show support for the current Government, including the Tatmadaw, in the face of international condemnation of its handling of the crisis in Rakhine State.[3002] Such events, while nominally promoting interfaith relations and tolerance, risk hardening negative opinions of intolerance towards the Rohingya.

1356. There have been reports that the Government of Myanmar is preparing a Bill for Protection against Hate Speech, which had earlier been called the Interfaith Harmonious Coexistence Bill.[3003] Although no official communications have been made with regard to this proposed law, and its exact status is unknown to the Mission, a draft text is circulating online. This draft focuses on the criminalisation of hate speech beyond what is required and permissible under international law. In May 2018, the Government of Myanmar also approved a budget of over 6.4 billion Kyat for the creation of a Social Media Monitoring Team.[3004] Details of the terms of reference of this team are unknown, but civil society organizations are concerned that it may result in new forms of surveillance and censorship of freedom of speech generally, not hate speech, further curtailing the enjoyment of human rights.[3005] The Mission encourages the Government of Myanmar to be transparent about these initiatives and to involve all relevant stakeholders, in particular civil society and media organizations, in the articulation of appropriate responses to the issue of hate speech. Rather than narrowly focusing on the (overly) broad criminalisation of hate speech and other measures that may result in censorship, the Mission urges the Government of Myanmar to adopt an approach that combines positive policy measures centred around the promotion and protection of the right to freedom of expression and the rights to equality and non-discrimination of all.

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appears to have banned the Dhamma Wunthanu Rakkhita Association, the successor of MaBaTha (see The Irrawaddy, "Nationalists Rally in Yangon to Denounce New Ban on Ma Ba Tha", 13 August 2018).

[3000] On 13 August 2018, the International Organizations Department of the Ministry of Foreign Affairs sent an email to various United Nations agencies in Myanmar sharing the links to four videos about Rakhine State and the August 2017 events. The videos contain anti-Muslim/anti-Rohingya messages. It is highly significant that the Ministry headed by Daw Aung San Suu Kyi took the initiative of sharing such videos with the United Nations (K-069-16).

[3001] E.g. Myanmar News Agency, "Interfaith Dialogue for Peace, Harmony and Security held" (The Global New Light of Myanmar, 6 August 2017).

[3002] E.g. Su Myat Mon, "Thousands rally behind NLD at interfaith prayer for peace" (Frontier Myanmar, 11 October 2017).

[3003] The Bill appears to have been initiated at the Ministry of Religious Affairs and Culture, but has reportedly been transferred to the Ministry of Home Affairs. This is unconfirmed.

[3004] At the 19 March 2018 session of the Pyidaungsu Hluttaw, Union Minister U Thant Sin Maung stated, "according to the 2017 Union Budget Allocation Law, with the permission of the Union Government organization no. (5/2018), the President Office spent the emergency funds for the work of the Social Media Monitoring Team - SMMT, for the purchase of 'Hardware and Devices, Software' the total budget of 6,426,000,000 Kyats." (https://pyidaungsu.hluttaw.mm/second-meeting-records/record19032018)

[3005] E.g. Zaw Zaw Htwe, Aung Kyaw Nyunt, "Critics rail against govt budget for monitoring of Facebook" (Myanmar Times, 22 March 2018).

C. Conclusion

1357. The Mission has reasonable grounds to conclude that the Government of Myanmar has routinely violated the fundamental freedoms of its people, including the interrelated rights to freedom of expression, association and peaceful assembly, particularly of those who dissent, challenge the role of the military, and demand accountability. While these violations particularly affect individuals belonging to ethnic and religious minorities, or those defending their cause, they should be of concern to the entire country. These violations have a profoundly negative impact on the democratic space in the country as a whole and seriously risk bringing Myanmar's slow democratic reform to a halt.

1358. The Myanmar authorities demonstrate a profound discomfort with scrutiny and criticism, taking active measures to restrict independent media commentary, stifle legitimate dissent and crack down on human rights defenders. At the same time, they have created an enabling environment for radical individuals and associated organizations, including 969 and MaBaTha, to openly disseminate hate speech and incite violence, hostility and discrimination against certain groups. The authorities have condoned these developments and, although generally using less inflammatory language, their rhetoric has mirrored and promoted the radical narratives. The Myanmar authorities, including both the Government and the Tatmadaw, have fostered a climate in which hate speech thrives, human rights violations are legitimised, and incitement to discrimination and violence facilitated. They have emboldened those who preach hatred and intolerance, and silenced those who stand for tolerance and human rights.

1359. The combined effect of these two trends is that Myanmar is neither ensuring freedom of speech for participation in proper political debate nor preventing speech that incites hostility, violence and discrimination, and has been linked to the commission of grave crimes. In both respects it is failing to comply with its obligations under international law. It needs both to widen the scope for speech that promotes scrutiny and criticism of government and military actions and to restrict the scope for hate speech.

1360. What is needed to address the situation are not initiatives that criminalise, censor or silence legitimate speech. Instead, the Government of Myanmar should prioritise fostering a legal and enabling environment for the full enjoyment of the rights to freedom of expression, association and peaceful assembly in line with international human rights norms and standards. This starts with repealing laws that criminalise the legitimate exercise of fundamental freedoms, dismantling discriminatory laws and policies, putting in place a robust anti-discrimination and equality law and acting to prevent speech that incites hostility, violence or discrimination. Human Rights Council resolution 16/18 and the Rabat Plan of Action provide a detailed framework for such policies.

VII. Hallmarks of Tatmadaw operations

1361. In the course of its in-depth fact-finding on the human rights situation in northern Myanmar and in Rakhine State, and its assessment of the respect for fundamental freedoms across Myanmar, the Mission was struck by how military operations and conduct – despite the specific contexts and the differences of scale – are essentially similar. The Mission identified at least four common characteristics of Tatmadaw operations, including operations conducted jointly with other Myanmar security forces. These can be considered as "hallmarks". These common characteristics establish the Tatmadaw's basic methodology – its strategies and tactics – and enable conclusions to be made about its performance, or rather its lack of performance, of its obligations under international law.

A. Targeting civilians

1362. As shown in the preceding chapters, Tatmadaw-led operations consistently fail to respect international human rights law and the international humanitarian law principles of distinction, proportionality and precaution. They not only primarily affect civilians; often civilians are simply targeted.

1363. In Kachin and Shan States, the Mission established that the Tatmadaw intentionally, frequently and systematically directed attacks against the civilian population or individual civilians. It has also systematically engaged in attacks that were indiscriminate, either because they were not directed against a specific military objective, or because they employed a method or means of combat that cannot be directed at a specific military objective. Underlying these tactics is the assumption that everyone belonging to a specific ethnic group necessarily supports or sympathises with the insurgent EAO from that ethnic group, and therefore a deliberate assimilation between the civilian population and the EAO. Attacks frequently occur in civilian-populated residential areas and in flagrant disregard of life, property and the well-being of civilians. This modus operandi has been a catalyst for the range of serious human rights violations outlined in this report, including extrajudicial killings, torture and ill-treatment, rape and other forms of sexual violence, arbitrary arrest and detention, and the large-scale destruction of villages and civilian property. Witnesses gave consistent accounts of the Tatmadaw randomly shelling villages, dropping bombs into civilian-populated areas, shooting at fleeing civilians, executing civilians in their custody and burning villages.

1364. While at a different level of intensity, the Tatmadaw's operations against the Rohingya in Rakhine State have followed similar patterns. They have been marked by an equation between an entire civilian population, the Rohingya, and the non-State armed actor that was the perceived or stated threat. On the ground, this has facilitated a campaign of mass destruction. The horrific patterns described in this report make clear that no distinction whatsoever was made between civilians and civilian objects, on the one hand, and fighters and military objectives, on the other. Everyone and everything was a target. Large-scale massacres were carried out. Men, women and children were killed and subjected to unimaginable abuse. Entire villages were wiped off the map. The operations and use of force were not targeted at eliminating a specific and limited security threat posed by ARSA; they were targeted at eliminating ARSA's support base, if not the group, the Rohingya, itself.

1365. The Tatmadaw's disregard for civilians is further demonstrated by its treatment of the ethnic Rakhine population. Just as other groups in Myanmar, they have been subjected to forced labour, arbitrary confiscation of their possessions and other violations of their rights. The level of arbitrariness and abuse of power on the part of the Tatmadaw is astounding.

1366. The targeting of civilians is perhaps most noticeable in how children are not spared by Tatmadaw operations; on the contrary, children are often specifically targeted. The Mission has found all six grave violations affecting children in Myanmar, as set out by the United Nations Special Representative of the Secretary-General for Children and Armed Conflict.[3006] These are the recruitment and use of children; killing and maiming of children; sexual violence against children; attacks on schools; abduction of children; and denial of humanitarian access. The Mission is particularly concerned about what appears to be the deliberate targeting of children for killing during the 2016 and 2017 "clearance operations" in Rakhine State. Accounts of children and infants being shot, stabbed and deliberately thrown into or trapped in burning houses are distressing in the extreme. Nearly 60 per cent of the refugee population in southern Bangladesh are children, with approximately 500,000 children arriving in the camps following the 2016 and 2017 operations. The majority of children, parents and relatives interviewed by the Mission gave consistent accounts of children and infants being subject to or witnessing serious violations. The damage to this generation of children cannot be understated. The consequences will be felt for generations to come.

1367. This deliberate targeting of civilians has been part of Tatmadaw policies, tactics and conduct for decades. The emergence and implementation of a "Four Cuts" counterinsurgency policy since the 1960s has long been reported. The policy is aimed at cutting off non-State armed groups from access to food, finances, intelligence and recruits

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[3006] A/RES/51/77.

from the local civilian population.[3007] The policy has been implemented through "clearance operations", essentially scorched earth campaigns in which large numbers of civilians are killed and entire villages destroyed, leading to mass displacement.[3008] The Tatmadaw has also been reported to categorise certain geographical areas based on the level of government control, resulting in tiered rules of engagement, some of which condone or even authorise targeting civilians including women and children.[3009] Reports indicate that areas with the most Government control were considered "white", disputed areas "brown" and areas with little or no control "black". "Black" areas have been described as "free fire" zones in which civilians are legitimate targets. In addition to the loss of civilian life, "clearance operations" have consistently resulted in the displacement of large segments of the affected population.[3010] For example, in 2010, the then Special Rapporteur on the human rights situation in Myanmar reported that humanitarian and human rights groups had documented the destruction of over 3,500 villages and hiding sites and the forced relocation of their populations in eastern Myanmar since 1996.[3011]

1368. The Mission is not in a position to confirm whether the "Four Cuts" policy was formally in place in the period under review and whether any of the military campaigns reviewed emanated from it. However, while there are indications that the Tatmadaw has moved away from use of the term "Four Cuts", the patterns of military operations clearly suggest that the policy – or a variant thereof – remains in place.[3012] In a number of Facebook posts seen by the Mission, soldiers refer to its implementation in relation to recent operations. For example, in a 6 June 2017 post, one soldier posted in relation to an operation in Kachin State: "We are about to do area clearance operations. 15 June is the deadline to leave the area. Anyone remaining after the deadline will be considered an accomplice of the KIA. If we apply "Four Cuts" to the KIA, they don't stand a chance. Now, those daring KIA members mingling with the civilians will face a good game!"[3013]

1369. The Mission concludes, on reasonable grounds, that the widespread and systematic practice of targeting of civilians, including children, and the complete disregard for civilian life and objects can only be a consequence of the implementation of policies and rules of engagement that articulate such tactics. These policies and practices violate Myanmar's obligations under international law and amount to criminal conduct. They are also unwarranted; military necessity can never justify killing indiscriminately, gang-raping women, killing and assaulting children, and burning entire villages. The tactics used by the Tatmadaw are consistently and grossly disproportionate to actual security threats, especially in Rakhine State, but also in northern Myanmar.

1370. While the present report outlines violations against civilians from many ethnic groups in Kachin, Rakhine and Shan States, the contempt shown by the Tatmadaw for human life, integrity and freedom and for international law generally should be of concern to the entire population of Myanmar. The number of refugees from areas outside these three States attests to the existence of similar concerns elsewhere in the country.

B. Sexual violence

1371. In 2011, in a video statement on sexual violence in conflict, Daw Aung San Suu Kyi, since 2016 State Counsellor, said, "Rape is used in my country as a weapon against those who only want to live in peace, who only want to assert their basic human rights. It is used as a weapon by armed forces to intimidate the ethnic nationalities and to divide our country."[3014] The Mission, based on all information gathered, has concluded that Daw Aung San Suu Kyi's views are correct. The use of rape and other sexual violence has continued unabated in the years since her statement.

[3007] XM-009, XM-010; Maung Aung Myoe, *Building the Tatmadaw: Myanmar Armed Forces since 1948* (Institute of Southeast Asian Studies, Singapore, 2009); A. Selth, *Burma's Armed Forces: Power Without Glory* (EastBridge, 2002).

[3008] XM-010, XM-009, XM-012. Also, International Human Rights Clinic at Harvard Law School, *Legal Memorandum: War Crimes and Crimes Against Humanity in Eastern Myanmar* (2014). International Human Rights Clinic at Harvard Law School, "*Preventing Indiscriminate Attacks and Wilful Killings of Civilians by the Myanmar Military*" (2014).

[3009] Ibid.

[3010] Ibid.

[3011] A/HRC/65/368, para. 49, for similar figures, see A/61/369, para. 44; A/HRC/4/14, para. 54.

[3012] XM-009, XM-010, XM-011, XM-013.

[3013] V-052, post on file with the Mission.

1372. As is apparent from this report, rape and other sexual violence have been a particularly egregious and recurrent feature of the targeting of the civilian population in Rakhine, Kachin and Shan States since 2011. In Kachin and Shan States, women and girls have been subjected to abduction, rape, including gang rape, and other sexual violence. Individual soldiers or groups of them have raped, gang raped or attempted to rape women and girls in fields and forests, in military compounds and in their homes. In Rakhine State, similar instances of rape and sexual violence have occurred throughout the reporting period. However, during the "clearance operations" of 2016 and 2017, rape and other forms of sexual violence were perpetrated on a massive scale. Hundreds of women and girls were raped, frequently gang raped. Mass gang rape, involving multiple perpetrators and multiple victims in the same incident, was a notable pattern. Eighty per cent of incidents of rape corroborated by the Mission were of gang rape, and 82 per cent of these gang rapes were perpetrated by the Tatmadaw. It occurred in at least 10 village tracts between 25 August and mid-September 2017. In some incidents, up to 40 women and girls were raped or gang raped together. Women and girls were more commonly gang raped than raped, sometimes by as many as 10 perpetrators. The rapes of Rohingya women and girls were particularly brutal, often accompanied by acts of sexual humiliation and physical and mental torture. They were also often accompanied by the killing of their children. The operations involved the systematic abduction of women and girls and in many cases their detention in military and police compounds, where they were raped or gang raped. Rape, gang rape, sexual slavery, forced nudity, sexual humiliation, mutilation and sexual assault have frequently been followed by the killing of victims. The Tatmadaw was overwhelmingly the main perpetrator.

1373. Similar patterns of rape and sexual violence in the context of military operations in Myanmar have been reported for at least three decades, by the United Nations and by local and international civil society organizations. In 1995, the Special Rapporteur on the human rights situation in Myanmar, Yozo Yokota, reported indications that "soldiers view rape as a right, and that sometimes it is encouraged by officers".[3015] Both the United Nations General Assembly and its Commission on Human Rights, in 2002 and 2005, expressed grave concern at systematic human rights violations in Myanmar, including rape, and called for them to be ended.[3016] In the following years, rape and sexual violence were reported as being widespread and systematic,[3017] especially in areas of conflict and increased militarisation.[3018] In 2008, the United Nations Committee on the Elimination of Discrimination against Women expressed concern about the high prevalence of sexual violence perpetrated by members of the armed forces and urged Myanmar to take immediate steps to end those violations and prosecute and punish perpetrators.[3019] More recently, in 2015, the United Nations Secretary-General found that sexual violence remained widespread in Kachin, northern Shan and Rakhine States and in areas subject to ceasefire agreements in Chin State and the southeast of the country.[3020]

[3014] Daw Aung San Suu Kyi, video statement delivered at the Nobel Women's Initiative "Women Forging a New Security: Ending Sexual Violence in Conflict conference" (2011). Video can be found here: https://www.opendemocracy.net/5050/opendemocracy/aung-san-suu-kyi-on-sexual-violence-in-conflict

[3015] A/50/568, para. 37.

[3016] E/CN.4/RES2002/67; A/RES/59/263.

[3017] E.g. A/49/594, para. 14, A/61/369, para. 27; A/HRC/10/19, para. 56.

[3018] E.g. A/HRC/22/58, para. 37; A/HRC/28/72, para. 35; A/HRC/31/71, para. 52; A/HRC/34/67, paras. 54-56.

[3019] CEDAW/C/MMR/CO/3, paras. 24 and 25.

[3020] E.g. S/2015/203, para. 41; S/2018/250, paras. 55-60.

1374. The scale, brutality and systematic nature of these violations, over this period of time, indicate that rape and sexual violence are part of a deliberate strategy to intimidate, terrorise or punish a civilian population, and are used as a tactic of war. This level of normalisation is only possible in a climate of long-standing impunity. When rapes and sexual violence are committed by, or in the presence of, senior military officers, with no sanction or consequence, it is easy to see how all Tatmadaw soldiers may consider themselves similarly authorised. The Myanmar authorities' failure to address the widespread perpetration of sexual and gender-based violence by its security forces has certainly contributed to women and girls, rather than being relegated to the side-lines of conflict and protected from its effects, becoming its frontline victims.[3021]

C. Exclusionary and discriminatory rhetoric

1375. The Tatmadaw has historically cast itself as the protector of the nation, preserving "national unity in the face of ethnic diversity", while prioritising Bamar-Buddhist identity and interests. Discrimination against ethnic and religious minority groups has been well documented for decades.

1376. Military operations on the ground are often accompanied by deeply insulting slurs and outright threats linked to ethnicity and religion. In Kachin and Shan States, the Mission received many accounts from victims and witnesses that the Tatmadaw used such derogatory language when committing human rights violations. For example, the manner in which torture and ill-treatment, including sexual violence, occurred often indicated the dehumanisation of ethnic minorities in Kachin and Shan States, with Tatmadaw soldiers verbally denigrating their religions and ethnicities. One Christian victim was made to imitate Jesus on a cross like the crucifixion.[3022] Rape victims reported that the perpetrators called them "Kachin bitch" or compared them to dogs.[3023] One witness of a gang rape of two girls heard the perpetrators say, "We will torture you Kachin bitches until you are extinct".[3024]

1377. The situation of the Rohingya in Rakhine State has been aggravated by their gradually increasing exclusion from the Myanmar nation since the 1960s, amid decades of State-sponsored stigmatization, leading to their being de facto stateless and reviled by much of the population. The members of the Mission were struck by the normality of deeply exclusionary and dehumanizing rhetoric in Myanmar society, actively nurtured by the Tatmadaw. While other ethnic and religious minorities are accepted, at least in theory, as belonging to the nation under their "national race" status, the Rohingya's lack of status has dramatically increased their vulnerability and contributed to the extreme scale and intensity of the violence against them.

1378. Many Rohingya interviewees described in considerable detail the derogatory and dehumanizing language used against them by Tatmadaw soldiers. They described being referred to as "Kalar" and "Mout Kalar" and by the Myanmar phrase for "unwanted person" (*Yay Myaw Kan Tin*).[3025] This frequently happened during beatings and arrests, and during sexual violence. The language used was not only insulting; it often also revealed an exclusionary vision. Many accounts described Rohingya being told that they should leave Myanmar as they are "Bengali" or "illegal Bengali" and that Myanmar is not their country.[3026] Several victims stated that they were told by the perpetrators to "leave the country and never come back, or be killed".[3027] Similarly, rape survivors stated that perpetrators used insults like "Kalar" and told them, "We will rape and kill you" and "We are going to kill you this way, by raping. We are going to kill Rohingya. This is not your country".[3028] In Facebook posts seen by the Mission, Tatmadaw soldiers have used such language. In a post of 26 August 2017, a soldier of the 99th LID said that he could not wait to be deployed to Rakhine State because, each passing second, the "Muslim dogs" are posing a threat to the citizens.[3029] The following day he said, "on the battlefield, whoever is quick will get to eat you, Muslim dogs".[3030] On 27 August 2017, a police officer involved in the Tatmadaw operations in Rakhine State posted, "Have been wanting to kill these 'Kalar' for so long. Only got to kill them just now."[3031]

[3021] The Government's failure to undertake any meaningful, independent or impartial investigations into allegations of widespread sexual violence also put it in breach of its obligations under arts. 2 and 15 of the Convention on the Elimination of All forms of Discrimination against Women, which it ratified in 1997.

[3022] PI-056.

[3023] PI-004, PI-023.

[3024] PI-069.

[3025] See chapter VI, section B: The issue of "hate speech".

[3026] BI-001, BI-006, EI-017, LI-006; LI-041, QI-041, QI-059, QI-064, YI-030, WI-010.

1379. The use of such derogatory, discriminatory and exclusionary language on the ground in the course of military operations is hardly surprising: it mirrors the statements made by the Tatmadaw Commander-in-Chief, Senior-General Min Aung Hlaing. The public statements of the Senior-General and his Office reveal a deeply exclusionary vision, mirroring the hateful anti-Rohingya rhetoric promoted by influential, ultranationalist Buddhist groups.[3032] He has denied that a group called "Rohingya" exists, consistently called this group "Bengali", and associated them with illegal immigration, terrorism and extremism. He has denied their suffering and – in the midst of a most brutal military campaign – denied any wrongdoing by the military and praised its discipline. At the same time, he has asked the Myanmar "ethnics", in his terms the non-Rohingya population of Myanmar, to be patriots in facing the threats to the nation. In doing so, he has effectively made the entire Rohingya group the enemy. These statements are part of a broader propaganda campaign, spreading demonstrably false information and inciting hatred, discrimination and violence. One recent example is the publication by the Tatmadaw Directorate of the Public Relations and Psychological Warfare of a document detailing the history of Rakhine State and the actions of the Tatmadaw. To demonstrate the alleged influx of "Bengali" into Rakhine State, it used photographs taken in Tanzania and Bangladesh.[3033] The same booklet points out, "Despite living among peacocks, crows cannot become peacocks".[3034]

D. Command climate and impunity

1380. The Tatmadaw acts with complete impunity and has never been held accountable for the violations of international law it is consistently involved in. Although occasionally a very small number of individual soldiers may be prosecuted for their actions, the Tatmadaw leadership and the Tatmadaw as an institution enjoy complete impunity.[3035] The widespread and systemic nature of the violations committed by the Tatmadaw, across the country, is linked to the command climate within the Tatmadaw which, explicitly or implicitly, authorises these violations. Impunity for offences is one element that contributes to such command climate.

1381. The Mission considers that several factors have contributed to a particularly toxic command climate in the Tatmadaw,, in which the widespread and systematic commission of abuses has become the norm: policies that explicitly or implicitly require the targeting of civilians; the institutionalised use of derogatory, dehumanising and exclusionary language;

[3027] BI-001, CI-147, LI-048, LI-059, LI-099, QI-038, QI-041, QI-111, YI-030.

[3028] EI-084, EI-090.

[3029] V-10.

[3030] V-11.

[3031] V-01.

[3032] See chapter VI, section B: The issue of "hate speech".

[3033] P. McPherson, "Exclusive: Fake photos in Myanmar army's 'True News' book on the Rohingya crisis" (Reuters, 30 August 2018); A. Slodkowski, S. Naing, "Myanmar army apologizes for mistaken photos in book on Rohingya crisis" (Reuters, 3 September 2018).

[3034] Tatmadaw, Directorate of the Public Relations and Psychological Warfare, "Myanmar Politics and the Tatmadaw", 2018, p. 115.

[3035] See chapter X, section B: History and climate of impunity in Myanmar.

and the praising of Tatmadaw performance, even where deeply marred by violations. The Tatmadaw has a well-documented and long history of carrying out military operations consistently resulting in allegations of serious human rights violations and violations of international humanitarian law. When incoming commanders accept well-known and documented past behaviour, without recommending or implementing legal, doctrinal or operational changes, they accept past methodologies as the established norm and continue them.

1382. Senior-General Min Aung Hlaing, appointed Commander-in-Chief in 2011, has consistently denied any Tatmadaw wrongdoing, both in the context of specific operations, such as in Rakhine State in 2016 and 2017, and more generally. For example, he has stated that, "no sexual violence happened in the history of Myanmar Tatmadaw".[3036] He regularly publishes posts praising the behaviour and discipline of Tatmadaw troops. For example, an official statement of 13 November 2017 noted, "Security forces took actions in accordance with the law, and did not overstep the law" and that his men "strictly followed orders and acted in accordance with the rules of engagement during the recent Rakhine crisis".[3037] These kinds of statements not only indicate that the Tatmadaw's most senior authority supports the actions taken but that the troops acted "strictly" as expected by his orders. There are no indications that any of the commanders responsible for the "clearance operations" in Rakhine State or in northern Myanmar have been held accountable for any wrongdoing on the part of their troops.

1383. A final factor contributing to this command climate is the role of the military justice system. The official investigation into the August 2017 "clearance operations", led by the Tatmadaw Inspector-General Lieutenant-General Aye Win, concluded that, "all security members abided by the orders and directions of superior bodies". The security forces were found to have "abided by the laws related to wars in conducting area clearance operations. So it is found that those security forces did not perform the use of excessive force."[3038] Statements absolving Tatmadaw troops, in the face of widespread, brutal and unjustifiable attacks on civilians, signal to these perpetrators that they are immune from sanctions for these crimes, and set the scene for their repetition.

1384. The Tatmadaw leadership has consistently failed to attribute responsibility for serious human rights violations. It has reinforced its message to troops that they will face no consequences. This explains the recurrence of such violations across the country, and over such an extensive timeframe. The leadership refuses to accept responsibility itself. If, as the Tatmadaw Inspector-General found, "all security members abided by the orders and directions of superior bodies", then those "superior bodies", right up to the Commander-in-Chief, are responsible for the gravest crimes under international law and should be held accountable.

VIII. Crimes under international law

1385. The Mission was mandated to establish the facts and circumstances of alleged human rights violations by military and security forces, and abuses, "with a view to ensuring full accountability for perpetrators and justice for victims". The Mission understood this to mean that it should consider the extent to which the violations and abuses may amount to crimes under international law entailing individual criminal responsibility. It has principally examined whether war crimes, crimes against humanity and/or genocide may have been committed.

[3036] Senior-General Min Aung Hlaing, Facebook post of 30 April 2018 (on file with the Mission).

[3037] Office of the Senior-General Min Aung Hlaing, Facebook post with the "findings of the Investigation Team in connection with the performances of the security troops during the terrorist attacks in Maungtaw region, Rakhine State" (Tatmadaw True News Information Team, 13 November 2017). Post on file with the Mission.

[3038] Ibid.

1386. In doing so, the Mission was cognisant of the fact that it is neither a court of law nor a prosecutorial body, and cannot make final determinations on individual criminal responsibility. As such, where the Mission finds that there are reasonable grounds to conclude that a crime under international law has been committed, this should be understood as meaning that the Mission considers that a competent prosecutorial body would have sufficient elements to proceed with a criminal investigation and prepare a case for adjudication on such charges.

1387. The conduct referred to in this section appears in summarised form and draws on the facts as described in detail in the preceding chapters.

A. Genocide

1388. The prohibition of genocide is a peremptory norm of international law (*jus cogens*) from which no derogation is permitted. Genocide was first codified as a crime in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which almost 150 States, including Myanmar in 1956, have now ratified.

1389. Article II of the Genocide Convention defines genocide as any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group. The definition requires consideration of whether there is a protected group, whether acts in one or more of the specified categories have been committed, and whether the acts were committed with genocidal intent.

1. Protected group

1390. Genocide can be committed against national, "ethnical", racial or religious groups. This list is exhaustive. Legal doctrine and jurisprudence is not consistent, but a practice has emerged of making a case-by-case assessment that combines the objective particulars of a given social or historical context, and the subjective perceptions of the perpetrator.[3039]

1391. The Mission is satisfied that the Rohingya, who predominantly live in Myanmar's Rakhine State, constitute a protected group. The Rohingya can be seen as an ethnic ("members share a common language or culture"), racial ("based on hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors") or religious ("members share the same religion, denomination or mode of worship") group,[3040] or a combination thereof. The Rohingya also consider themselves as a distinct group, as do the Myanmar authorities and security forces. The historic origins of the Rohingya in Myanmar, as well as their claim to "national race" status under Myanmar law, are disputed in Myanmar. However, this does not call into question that the Rohingya are a distinct group, nor does the fact that the Myanmar authorities do not officially recognize them as a "national race" or refer to them as "Bengali". If anything, the differential treatment of the Rohingya, through the adoption of specific laws, policies and practices, supports the conclusion that they are a protected group as defined by the Genocide Convention.

2. Physical acts

1392. Genocide requires the commission of physical acts within any of the five prohibited categories listed in its definition. The gross human rights violations detailed in this report, suffered by Rohingya at the hands of the Tatmadaw and other security forces (often in concert with civilians), include conduct that falls within four of these five categories of prohibited acts. Perpetrators have killed Rohingya, caused serious bodily and mental harm to Rohingya, deliberately inflicted conditions of life calculated to bring about the physical destruction of Rohingya, and imposed measures intended to prevent births of Rohingya.

[3039] ICTR, *Prosecutor v Bagilishema*, ICTR-95-1A-T, Judgment, 7 June 2001, para 65; ICTY, *Prosecutor v Brdjanin*, IT-99-36-T, Judgment, 1 December 2004, para 684.

[3040] ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, paras 512-515.

1393. For prohibited physical acts, the ICC Elements of Crimes requires that the conduct took place "in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect [the] destruction".[3041] This precludes isolated crimes from falling within the crime of genocide.[3042] As is evident from the preceding chapters and the discussion below, the physical acts in Myanmar were committed in the context of a manifest pattern of similar conduct.

(a) Killing members of the group

1394. The Tatmadaw and other security forces (often in concert with civilians) intentionally and unlawfully killed Rohingya men, women and children throughout the period under review, that is, since 2011, but particularly since 25 August 2017. These deaths were a direct or indirect result of the severe and systemic oppressive measures imposed on the Rohingya and the "clearance operations" in 2016 and 2017 in which they culminated. During these operations, killings occurred with horrifying intensity. The security forces entered village after village, opening fire on villagers and burning their houses. Villagers were killed both indiscriminately and in a targeted manner. They were locked in or thrown into burning houses, and lined up and executed. Accompanying ethnic Rakhine slit the throats of those too injured, young or old to escape.

1395. The exact number of casualties may never be known, either for those who perished from years of oppression or those who died in the "clearance operations". As outlined above, the Mission has concluded on reasonable grounds that the "clearance operations" that started on 25 August 2017 alone have directly resulted in more than 10,000 deaths. This report details large-scale massacres in five locations, sometimes with hundreds of villagers killed, with details of other incidents where dozens were killed. In Min Gyi and Maung Nu, villagers were gathered together, before men and boys were separated and killed. In Min Gyi, women and girls were taken to nearby houses, gang raped, then killed or severely injured. Houses were locked and set on fire. Few survived. The Mission verified, through multiple interviews and other information, "clearance operations" in 54 separate locations, and it received first-hand accounts of additional "clearance operations" in a further 22 locations. The killing was widespread, systematic and brutal.

(b) Causing serious bodily or mental harm to members of the group

1396. Serious *bodily* harm refers to harm that involves serious injury to health, disfigurement, or serious injury to the external or internal organs, or senses.[3043] It can be caused by, but is not restricted to, conduct such as torture, rape, sexual violence or inhuman or degrading treatment.[3044] Serious *mental* harm must amount to more than a temporary impairment of mental faculties[3045] and is assessed on a case-by-case basis, with reference to the immediate circumstances surrounding the incident.[3046] The harm, either bodily or mental, does not have to be permanent or irremediable, but must go beyond temporary unhappiness, embarrassment or humiliation, and inflict "grave and long-term disadvantage to a person's ability to lead a normal and constructive life".[3047] The term "serious" means that the bodily or mental harm should be such that it threatens the destruction of the group, in whole or in part.[3048]

[3041] International Criminal Court, *Elements of Crimes* (The Hague, 2011), hereafter "ICC Elements of Crimes", art. 6(a), para. 4.

[3042] The ICTY rejected this requirement, considering that it does not form part of customary international law: ICTY, *Prosecutor v. Krstic*, IT-98-33-A, Judgment, 19 April 2004, para. 224; ICTY, *Prosecutor v. Jelisic*, IT-95-10-T, Judgment, 14 December 1999, para. 100.

[3043] ICTR, *Prosecutor v. Kayishema*, ICTR-95-1-T, Judgment, 21 May 1999, para. 109.

[3044] ICC Elements of the Crimes, art. 6; ICTR, *Prosecutor v. Karemera and Ngirumpatse*, ICTR-98-44-T, Judgment, 2 September 2012, para. 1609.

[3045] ICTR, *Prosecutor v. Ntagerura et al.*, ICTR-99-46-T, Judgment, 25 February 2004, para. 664.

[3046] ICTR, *Prosecutor v. Rukundo*, ICTR-2001-70-T, Judgment, 27 February 2009, paras. 261-262.

[3047] ICTY, *Prosecutor v. Karadzic*, IT-95-5/18-T, Judgment, 24 March 2016, paras. 543-545.

1397. The physical injuries of large numbers who survived the October 2016 and August 2017 "clearance operations" rise to the level of serious bodily harm. The scale and brutality of attacks, the close range of weapons, the widespread use of knives, and the practice of burning people in their houses mean that many who survived the "clearance operations" bear the after-effects of bullet, burn and knife wounds that cause not only disfigurement, but long-term and serious injury. Women and girls who had their breasts cut off and those who lost limbs or parts of limbs suffered "serious injury to external organs" rising to the level of serious bodily harm. The rape, gang rape and other sexual violence inflicted on Rohingya women and girls before and during the "clearance operations" was often accompanied by the additional infliction of serious bodily harm; victims were severely bitten or otherwise scarred on the face, breasts, thighs, and genitalia, and subjected to other mutilation of their reproductive organs. The bite-marks and other mutilations have left permanent scars and serve as a constant reminder to survivors, their families and community of the crimes to which they have been subjected. Given the substantial number of women and girls affected, it is difficult to believe that this was not an intentional act akin to a form of branding. Even without such permanent and disturbing reminders, rape and sexual violence are steps in the destruction of a group: "the destruction of the spirit, of the will to live, and of life itself".[3049] It has been recognized as demonstrating an intent to destroy a group "while inflicting acute suffering on its members in the process".[3050]

1398. In addition to physical scars, the trauma suffered by those who manage to escape situations of mass killing or large-scale sexual violence constitutes "serious mental harm". "[F]ear of being captured, and, at the moment of separation, the sense of utter helplessness and extreme fear for their family and friends' safety as well as for their own safety, is a traumatic experience from which one will not quickly, if ever, recover."[3051] For those who did not escape, the threat of death and knowledge of impending death also constitutes serious mental harm as a separate genocidal act from the killing itself.[3052] Numerous victims met by the Mission displayed signs of serious mental trauma. The Mission received credible information and obtained an expert opinion indicating that many survivors of rape and other forms of sexual violence currently residing in the refugee camps in southern Bangladesh have become socially withdrawn, reluctant to eat and passive and fearful in their behaviour. Reports of self-injurious behavior and attempted suicides were received.[3053]

1399. The infliction of serious mental harm does not stop with the cessation of violent acts. The survivors of the July 1995 Srebrenica killings in the former Yugoslavia, for example, were found to have suffered serious mental harm from both witnessing the killing operation, and the horrific circumstances of their escape.[3054] The International Criminal Tribunal for the former Yugoslavia recognized that the painful separation process of family members, the fear and uncertainty of their fate, as well as those of missing relatives, the appalling conditions of the journey, the continuation of their profound trauma, as well as the financial and emotional difficulties they faced in their drastically changed lives, supported the conclusion that the women, children and elderly who were forcibly transferred from Srebrenica suffered serious mental harm.[3055] There are clear parallels with the experiences and situations of the Rohingya refugees. The Rohingya who survived the "clearance operations" then faced a journey of significant risk, under appalling conditions, many having just suffered the trauma of losing and witnessing the loss of family and friends, their homes and villages. The Mission concludes on reasonable grounds that serious bodily and mental harm, as an underlying genocidal act, is present.

[3048] ICTR, *Prosecutor v. Kajelijeli*, ICTR-98-44-T, Judgment, 1 December 2003, para. 814.

[3049] ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 732.

[3050] ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 733.

[3051] ICTY, *Prosecutor v. Blagojevic and Jokic*, IT-02-60-T, Judgment, 17 January 2005, para. 647.

[3052] ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 206.

[3053] K-122, K-124.

[3054] ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, fn. 595.

[3055] ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 210.

(c) [illegible] conditions of life calculated to bring about its physical destruction in whole or in part

1400. [illegible] of so-called "slow death", meaning situations where the perpetrator does not immediately kill the members of the group but uses methods that seek to bring about their physical destruction [illegible] end. It does not require proof that the conditions [illegible] to death or serious bodily or mental harm. It is enough that they were calculated to produce this result.[3056]

1401. [illegible] having [illegible] failing to provide adequate medical care; systematically expelling members of the group from their homes; and generally creating circumstances that would lead to a slow death, such as the lack of proper food, water, shelter, clothing, sanitation, or subjecting members of the group to excessive work or physical exertion.[3057] Whether the measures imposed are calculated to bring about the physical destruction of the group depends on the actual nature of the conditions, the length of time that members of the group were subjected to them, and the characteristics of the group such as its vulnerability.[3058]

1402. The Rohingya are an extremely vulnerable group. Over a long period, they have endured [illegible] and systemic restrictions on all aspects of their life amounting to persecution, which on their face, appear calculated to bring about their physical destruction. The [illegible] forms the pattern of gradual marginalization, exclusion and "othering" [illegible] of harmful rhetoric targeting the Rohingya on ethnic or religious grounds. A complex system of [illegible] and orders was [illegible] "existential threat" to the nation, in an effort [illegible] so-called "uncontrollable" birth rates under control, and to change the demographic composition of Rakhine State. It has pushed the Rohingya population into extreme vulnerability, weakening individuals, families and communities.

1403. The movement restrictions; the restrictions on access to food and livelihood; the arbitrary and cumbersome procedures to access hospitals and health facilities; the restrictions on education; the exorbitant bribes, fees and economic pressures; their segregation from other communities; and the regular blocking of humanitarian assistance in Rakhine State - collectively these measures have eroded the ability of the Rohingya to support themselves and to survive as a community in Rakhine State. They have exposed them to destitution, immediate and long-term health risks, and preventable deaths. The acute levels of malnutrition in northern Rakhine State attest to that.

1404. The Rohingya have been systematically expelled from their homes and their lands. The State-sanctioned oppression and persecution and the repeated cycles of mass violence have forced unprecedented levels of Rohingya to flee Myanmar. Throughout the period under review, thousands of Rohingya felt compelled to risk their lives leaving on boats into the Bay of Bengal and the Andaman Sea. Tens of thousands were displaced by the violence in 2012. Approximately 87,000 crossed into Bangladesh following the 2016 "clearance operations". Over 725,000 fled the 2017 "clearance operation" *en masse*, seeking protection in refugee camps in Bangladesh. There they live in extremely difficult conditions, including because of overcrowding and lack of privacy; lack of employment or livelihood or educational opportunities; limited access to health care; etc. The Rohingya have been pushed into these conditions through repeated cycles of forced displacement, causing grave and long-term disadvantage to their ability to lead a normal and constructive life, and contributing to their destruction as a group.

[3056] ICTY, *Prosecutor v. Karadzic*, IT-95-5/18-T, Judgment, 24 March 2016, para. 546.

[3057] ICTY, *Prosecutor v Brdjanin*, IT-99-36-T, Judgment, 1 December 2004, para. 691; ICTY, *Prosecutor v. Stakic*, IT-97-24-T, Judgment, 31 July 2003, para. 517; ICTR, *Prosecutor v. Musema*, ICTR-96-13-T, Judgment, 27 January 2000, para. 157; ICTR, *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, paras. 115–116; ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 506.

[3058] ICTY, *Prosecutor v. Karadzic*, IT-95-5/18-T, Judgment, 24 March 2016, para. 548.

1405. A group is comprised of "its individuals, but also of its history, tradition, the relationship with other groups, and its relationship with the land".[3059] It has been held that "the physical or biological destruction of the group could therefore be considered the likely outcome of a forcible transfer of the population when this transfer is conducted in such a way that the group can no longer reconstitute itself".[3060] The extensive burning that destroyed Rohingya villages, followed by the bulldozing of lands to an unrecognizable state in many locations, then completes the picture: the Rohingya fled for their lives from their homes and their land, in circumstances in which they can likely never return. Their villages, and the communities, as they once existed in the three townships of northern Rakhine, have been erased forever.

1406. This pattern of severe oppression and repeated displacement must be considered together with the pervasive sexual violence by Tatmadaw forces. Rape has been recognized as a condition of life designed to bring about its destruction, and has been equated with "the starving of a group of people, reducing required medical services below a minimum, and withholding sufficient living accommodation for a reasonable period".[3061] As observed by a scholar in the context of Rwanda, "the evidence illustrates that many rapists expected, consequent to their attacks, that the psychological and physical assault on each Tutsi woman would advance the cause of the destruction of the Tutsi people".[3062] The scale, brutality and systematic nature of rape, gang rape, sexual slavery and other forms of sexual violence against the Rohingya lead inevitably to the inference that these acts were, in fact, aimed at destroying the very fabric of the community, particularly given the stigma associated with rape within the Rohingya community.

1407. In combination, these factors, pervasive in their nature and many inflicted over a period of long duration, against a group that had previously been made extremely vulnerable, provide reasonable grounds to conclude the existence of the imposition of conditions of life calculated to bring about the physical destruction of the Rohingya group, as an underlying genocidal act.

(d) Imposing measures intended to prevent births within the group

1408. This category covers measures directed at inhibiting the capacity of group members to procreate. The measures can be physical (measures which destroy the reproductive capacity of a group by physical means) or psychological (measures setting up insurmountable psychological obstacles to having children).

1409. The measures imposed on Rohingya women and girls, when considered both individually and cumulatively, appear targeted at the capacity of the group to "live and reproduce normally".[3063] The Myanmar authorities, including the Tatmadaw, have actively propagated the narrative of "uncontrollable" Rohingya birthrates that constitute a threat to the nation. This is despite the results of the 2014 Population and Housing Census, released in 2016, indicating that the percentage of Muslims in the country had not meaningfully increased in recent decades.[3064] Concerns that Rohingya would soon be outnumbering the "native" groups had nevertheless led to a 2015 package of national laws to "protect race and religion", which discriminate against women and girls. While the level of implementation of these laws is unclear, for many years local orders in northern Rakhine have imposed marriage restrictions on Rohingya, as well as restrictions on the permissible number and spacing of children. As detailed above, these have led to long delays in obtaining marriage permissions, in complex and humiliating procedures, often leading couples to marry religiously only and risking penalties. It has also led to unsafe abortions.

[3059] ICTY, *Prosecutor v Blagojevic and Jokic*, IT-02-60-T, Judgment, 17 January 2005, para. 666.

[3060] Ibid.

[3061] ICTR, *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, para. 116.

[3062] B. Nowrojee, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath*, 4 September 1996, p. 16.

[3063] ICTY, *Prosecutor v. Popovic et al.*, IT-05-88-T, Judgment, 10 June 2010, para. 855.

[3064] See 2014 Population and Housing Census of Myanmar (available at http://myanmar.unfpa.org/sites/default/files/pub-pdf/UNION_2-C_religion_EN_0.pdf).

1410. Within this context of obsession with the procreation of the Rohingya, and the imperative of changing the demographic balance in Rakhine State, the high prevalence of rape and other brutal forms of sexual violence against women and girls in Rakhine State, in particular in the context of the "clearance operations", may have been aimed at affecting their reproductive capacity. The majority of victims were either of childbearing age or younger, and the rapes were often accompanied by deliberate mutilation of genitalia. Eighty per cent of rape survivors interviewed by the Mission were victims of gang rape. Apart from the obvious physical destruction of the reproductive capacity in such cases, members of the Rohingya community who have experienced sexual violence are less likely to be able to procreate. Where Rohingya women or girls have been subjected to rape, gang rape or other forms of sexual violence, this significantly reduces the possibility of marriage. In some cases, Rohingya husbands have rejected spouses who have been subjected to sexual violence. This is largely due to the cultural stigma surrounding sexual violence, victimhood and perceived gender roles within the community. Rape "can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate".[3065] Members of security forces perpetrating sexual violence, and certainly their commanders who ordered or condoned it, would be aware of this dynamic.

3. Genocidal intent

1411. The crime of genocide is defined by its specific intent requirement. In addition to demonstrating that the perpetrator had the intent to commit the underlying act, it must also be shown that the act was committed with the specific intent (*dolus specialis*), being the intent to destroy in whole or in part a protected group as such.

(a) Legal requirements

1412. Genocidal intent requires that the perpetrator intend to "destroy" the protected group in whole or in part, as such. Destruction is understood to mean physical or biological destruction, rather than the disbandment or expulsion of the group. Other forms of destruction, such as social assimilation or attacks on cultural characteristics, do not constitute genocide if they are not related to the physical or biological destruction of the group.[3066]

1413. The words "in whole or in part" signify that it is not necessary that the perpetrator intends the destruction of the entire group. The partial destruction of the group (for example, destruction in a certain geographical location) suffices, when a substantial part of the group has been targeted, being a part that is sufficiently large to impact the group as a whole.[3067] Factors relevant to whether the targeted part of the group meets this threshold include its numeric size (both absolute and relative) and the prominence of the targeted individuals within it.[3068]

1414. The words "as such" emphasize the intent to destroy the protected group "as a separate and distinct entity", rather than an individual. The victims are chosen by reason of their membership of the group for which destruction is sought, as opposed to being targeted as individuals.[3069]

[3065] ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 508.

[3066] ICTY, *Prosecutor v. Krstic*, IT-98-33-T, Judgment, 2 August 2001, para. 580; ICJ, Case Concerning Application of the Convention on the Prevention and Punishment of Genocide, Bosnia Herzegovina v. Yugoslavia (Serbia and Montenegro), Judgment, 27 February 2007, para. 344.

[3067] ICJ, Bosnia Herzegovina v. Yugoslavia (Serbia and Montenegro), Judgment, 27 February 2007, para. 198.

[3068] ICTY, *Prosecutor v. Krstic*, IT-98-33-A, 19 April 2004, paras. 12-14.

[3069] Ibid.

(b) Establishing genocidal intent

1415. Direct evidence of genocidal intent will rarely exist.[3070] In its absence, genocidal intent can be inferred from circumstantial evidence, that is, "all of the evidence taken together".[3071] For genocidal intent to be established to the criminal standard of "beyond reasonable doubt", any inference drawn from circumstantial evidence must be the only inference that could reasonably follow from the acts in question.[3072] The factors relevant to a determination of genocidal intent include:[3073]

- *evidence emanating from or relating to an accused*: including various forms of communication to show the possible formation of intent, including discrete words and utterances by the accused, and evidence tending to show that the accused ordered attacks on the targeted group.[3074]
- *evidence relating to others*: the words and deeds of others acting with or at the behest of the accused.[3075]
- *contextual evidence in the form of plans, policies and preparation*: the existence of a genocidal plan or policy is not a legal requirement but proof of such plan has been considered relevant to establishing intent.[3076] The existence of such plan or policy may be inferred from various indicia: government involvement in attacks;[3077] the involvement of public officials or soldiers carrying out the attacks;[3078] existence of execution lists targeting the protected group; the dissemination of extremist ideology; the screening and selection of victims on the basis of their membership in the protected group.[3079]
- *contextual evidence in the form of modus operandi*: where acts of a consistent character have been systematically directed against a protected group.[3080]
- *evidence of breadth and scale*: the breadth and scale of attacks, as well as whether or not the attacks were widespread, are relevant to an inference on the formation of

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[3070] ICTR, *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, Judgment, 1 June 2001, para. 159: "explicit manifestations of criminal intent are, for obvious reasons, often rare in the context of criminal trials".

[3071] ICTY, *Prosecutor v. Karadzic*, IT-95-5/18-T, Judgment, 24 March 2016, paras. 550, 2592; ICTY, *Prosecutor v. Popovic et al.*, IT-05-88-A, Judgment, 30 January 2015, para. 468; *Prosecutor v Hategekimana*, ICTR-00-55A-A, Judgment, 8 May 2012, para. 133.

[3072] ICJ, Bosnia Herzegovina v. Yugoslavia (Serbia and Montenegro), Judgment, 27 February 2007, para. 373. See also ICTY, *Prosecutor v. Karadzic*, IT-95-5/18-T, Judgment, 24 March 2016, para. 2592; ICTY, *Prosecutor v Brdjanin*, IT-99-36-T, Judgment, 1 December 2004, para. 970.

[3073] ICC, *Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09-3, Separate and Dissenting Opinion of Judge Anita Usacka, 4 March 2009, pp. 17-29.

[3074] ICTR, *Prosecutor v Kayishema and Ruzindana*, ICTR-95-1-A, Judgment, 1 June 2001, para. 148; ICTY, *Prosecutor v. Jelisic*, IT-95-10-T, Judgment, 14 December 1999, para. 75; ICTR, *Prosecutor v. Bagilishema*, No. ICTR-95-1A-T, Judgment, 7 June 2001, para. 63; ICTR, *Prosecutor v Akayesu*, No. ICTR-96-4-T, Judgment, 2 September 1998, para. 728; ICTR, *Prosecutor v. Rutaganda*, No. ICTR-96-3-T, Judgment, 6 December 1999, para. 399; ICTR, *Prosecutor v Gacumbitsi*, ICTR-2001-64-T, Judgment, 17 June 2004, para. 259.

[3075] ICTR, *Prosecutor v Niyitegeka*, ICTR-96-14-T, Judgment, 16 May 2003, paras. 413, 419.

[3076] ICTY, *Prosecutor v Jelisic*, IT-95-10-A, Judgment, 5 July 2001, para. 48; ICTR, *Prosecutor v Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, para. 94.

[3077] ICTY, *Prosecutor v Krstic*, IT-98-33-A, Judgment, 19 April 2004, para. 35 ICTR, *Prosecutor v Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, paras. 309 - 312.

[3078] ICTR, *Prosecutor v Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, para. 536; ICTR, *Prosecutor v Niyitegeka*, ICTR-96-14-T, Judgment, 16 May 2003, para. 414; ICTR, *Prosecutor v Kamuhanda*, ICTR-95-54A-T, Judgment, 22 January 2005, para. 644.

[3079] ICTR, *Prosecutor v Kayishema and Ruzindana*, ICTR-95-1-A, Judgment, 1 June 2001, para. 139.

[3080] ICTY, *Prosecutor v Jelisic*, IT-95-10-A, Judgment, 5 July 2001, para. 47; ICTR, *Prosecutor v Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 523; ICTR, *Prosecutor v Kayishema*, ICTR-95-1-T, Judgment, 21 May 1999, paras. 93, 289, 534-535, 537; ICTR, *Prosecutor v Muhimana*, ICTR-95-1B-T, Judgment, 28 April 2005, para. 496.

intent.[3081] In some instances, one particularly brutal attack, targeting several thousand members of a group, can indicate the existence of intent.[3082]

- *other factors*: such as whether bodily injuries were extensive, whether property belonging to members of the targeted group was targeted, whether derogatory language was used by an accused or by others against members of the targeted group.[3083]

1416. An inquiry into genocidal intent should not be compartmentalized by considering separately whether there was specific intent to destroy a protected group through each of the genocidal acts.[3084] The existence of genocidal intent must be based on all of the evidence, taken together.[3085]

(c) Consideration of genocidal intent in the case of the Rohingya

Scope of the present analysis

1417. With the legal elements of genocide in mind, a finding that "genocide" occurred cannot be made in the abstract. The inclusion of "genocidal intent" as an element of the crime means that an assessment of whether genocide occurs necessarily involves an assessment of whether a particular perpetrator (or group of perpetrators) possessed the specific intent to destroy a protected group, in whole or in part, at the relevant moment in time. The determinative factor therefore is the acts and conduct of the accused persons themselves, or the acts and conduct of others acting at their behest. Genocidal intent of an accused "should be determined, above all, from his words and deeds, and should be evident from patterns of purposeful action".[3086]

1418. On the basis of information before it, and mindful of the limits of its mandate, the Mission has not concluded that particular individuals committed the identified prohibited acts with the requisite special intent, giving rise to individual criminal responsibility for genocide. Instead, the Mission assessed the body of available information in light of the jurisprudence of international tribunals, and considered whether the factors that have allowed for the reasonable inference of genocidal intent in other contexts and cases, are present in the case of the Rohingya in Rakhine State. This exercise has been undertaken to assist in any subsequent determination of genocidal intent on the part of particular perpetrators, properly identified, before a court of law.

Factors relevant to a finding of genocidal intent

1419. The factors identified by the Mission fall broadly into five categories. A first set of factors relates to the broader context within which the acts occurred and the widely prevalent rhetoric of hatred and contempt toward Rohingya. None of the prohibited physical acts described in the preceding chapters occurred in a vacuum. They were cultivated through an environment of long-standing, extreme and systemic discrimination based on the ethnic, racial and/or religious identity of the Rohingya. As described in this report, such discrimination is rooted in Myanmar's laws, policies and practices. The Rohingya community has long been persecuted. This oppression and targeting has been accompanied and compounded by stigmatization of the group, a process in which

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[3081] ICTY, *Prosecutor v Krstic*, IT-98-33-A, Judgment, 19 April 2004, para. 35; ICTR, *Prosecutor v. Gacumbitsi*, ICTR-2001-64-T, Judgment, 17 June 2004, para. 258; ICTR, *Prosecutor v Kamuhanda*, ICTR-95-54A-T, Judgment, 22 January 2005, para. 629; ICTR, *Prosecutor v Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 730; ICTR, *Prosecutor v Muhimana*, ICTR-95-1B-T, Judgment, 28 April 2005, paras. 496, 498, 516; ICTR, *Prosecutor v. Ntakirutimana*, ICTR-96-10 and ICTR-96-17-T, Judgment, 21 February 2003, para. 785.

[3082] ICTR, *Prosecutor v Ndindabahizi*, ICTR-2001-71-T, Judgment, 15 July 2004, para. 461.

[3083] ICTR, *Prosecutor v. Muhimana*, ICTR-95-1B-T, Judgment, 28 April 2005, para. 496; ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 728.

[3084] ICTY, *Prosecutor v. Stakic*, IT-97-24-A, Judgment, 22 March 2006, para. 55.

[3085] Ibid.

[3086] ICTR, *Prosecutor v Bagilishema*, ICTR-95-1A-T, Judgment, 7 June 2001, para. 63.

Government officials, military and other security forces, and religious figures have had a role.

1420. The Rohingya have not only been denied an identity; they have been systematically referred to in derogatory and dehumanizing terms.[3087] The apparent intent and purpose of such rhetoric have been to exclude them from the Myanmar nation to which they once belonged, in pursuit of an exclusionary vision based on "national races". This process of "othering" the Rohingya has resulted in them systematically being called "Bengali" or "illegal immigrants" who will overrun and Islamise the country. They are portrayed as an existential threat both to the nation and to its Buddhist character. Such rhetoric, coming from figures of authority, has fueled anti-Rohingya sentiment across the country for many years. Following the 2012 violence, a shift in this rhetoric saw an increase in references to Rohingya as "violent extremists" and "terrorists" and practicing "violent Islam", further fueling fear and deep resentment. The impact of derogatory language has been magnified through social media platforms, on which hate speech, discriminatory narratives and incitement to hostility and violence against Rohingya have been rampant.

1421. The use of derogatory language toward members of the targeted group is a relevant indicator of genocidal intent.[3088] It demonstrates a willingness to debase and humiliate a group, in an attempt to strip it of its humanity in the eyes of the eventual direct perpetrators, and as such it is often a precursor to acts of violence to come. "The general political doctrine"[3089] which gives rise to the prohibited genocidal acts has been an important factor in determining the existence of genocidal intent in other contexts. In relation to the Rohingya, the general political doctrine is one of State-sanctioned oppression and persecution in all aspects of their life. This, in combination with past and present Governments' failure to condemn the pervasive rhetoric of hatred and contempt towards the Rohingya, as well as the participation of high-level officials and figures of authority in it, could constitute one set of indicators from which to reasonably infer that acts were committed with genocidal intent.

1422. A second set of indicators is the specific utterances of government officials, politicians, religious authorities and military commanders, as well as of direct perpetrators prior, during and after the violence. Survivors of the "clearance operations" described the derogatory language that regularly accompanied acts of violence. This language was not only insulting, it often also revealed an exclusionary vision, with perpetrators using expressions such as "go away", "you don't belong here", "you are Bengali", "we will kill you all".[3090] A female survivor, gang raped with her sister, recounted a member of the Tatmadaw saying, "We are going to kill you this way, by raping. We are going to kill Rohingya. We will rape you. This is not your country."[3091] In Facebook posts dated August 2017, a Tatmadaw soldier spoke of excitement in being deployed to Rakhine State because "Muslim dogs" were posing a threat to the citizens[3092], while a police officer involved in "clearance operations" posted "Have been wanting to kill these 'Kalar' for so long. Only got to kill them just now."[3093] In Rwanda, the fact that attackers were heard singing songs referring to the extermination of the Tutsi was taken into account when finding genocidal intent.[3094] Phrases such as "exterminate them, look for them everywhere, kill them, and get it over with" were relied upon to ascribe the specific intent to destroy the Tutsi population to the attackers at a particular massacre site.[3095] In the context of the "clearance operations", similar utterances may demonstrate an intent on the part of direct perpetrators to destroy the Rohingya as a group.

[3087] See chapter VI, section B: The issue of "hate speech".

[3088] ICTR, *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, paras. 93, 527; ICTY, *Prosecutor v. Popovic et al*, IT-05-88-T, Judgment and Sentence, 10 June 2010, para. 1177; ICTR, *Prosecutor v. Muhimana*, ICTR-95-1B-T, Judgment, 28 April 2005, para. 496.

[3089] ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 524.

[3090] BI-001, BI-006, CI-147, EI-017, LI-006; LI-041, LI-048, LI-059, LI-099, QI-038, QI-041, QI-059, QI-064, QI-111, YI-030, WI-010.

[3091] EI-084.

[3092] V-10.

[3093] V-01.

[3094] ICTR, *Prosecutor v. Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Judgment, 13 December 2004, paras. 360-364.

1423. Government officials, politicians, religious figures, and military and security force commanders have also made deeply disturbing public statements or comments. As highlighted in this report, the Mission found many statements that demonstrate utter contempt towards the Rohingya community, some including direct threats of, or incitement to, violence. In 2015, Nay Myo Wai, Chair of the Peace and Diversity Party, at a rally in Bo Sein Menn football ground in Bahan Township, Yangon, declared to a crowd who can be heard cheering in the video posted to YouTube: "I won't say much, I will make it short and direct. Number one, shoot and kill them! (the Rohingyas). Number two, kill and shoot them! (the Rohingyas). Number three, shoot and bury them! (the Rohingyas). Number four, bury and shoot them! (the Rohingyas). If we do not kill, shoot, and bury them, they will keep sneaking into our country!" In combination with the official narrative of denying any violations against the Rohingya, the near-total impunity for the instigators and perpetrators of grave crimes against the Rohingya, and the lack of condemnation of violence against the Rohingya, it is difficult to view such statements as anything other than an official approval of discrimination and extreme violence against this group.[3096]

1424. Statements have been made by some of the most authoritative figures in Myanmar society. In July 2012, then President Thein Sein publicly stated, "the last resort to this issue is to hand in the Rohingya who sneaked in to UNHCR to stay in the refugee camps". In October 2017, Sitagu Sayadaw, one of Myanmar's most revered monks, made an address to members of the military at a training school, apparently absolving the military of any guilt or culpability for killing Rohingya. Senior-General Min Aung Hlaing, the Tatmadaw's Commander-in-Chief since 2011 and the most powerful person in Myanmar, has made numerous public statements that deny the existence of Rohingya; label the group as illegal immigrants, terrorists and extremists; deny any wrongdoing in Tatmadaw operations in Rakhine State; ignore the suffering of Rohingya; and call on the Myanmar "ethnic people" to take patriotic action. At the height of the "clearance operations", he stated that the "Bengali problem" was an "unfinished job" that the Government was taking great care to solve. These statements were all made in a highly volatile and tense context. The fact that figures of authority chose to mirror hateful narratives spread by ultranationalist movements, rather than combat them, may be revealing of their own sentiments and intent.

1425. A third set of indicators of intent relates to the existence of discriminatory plans and policies that seek to change the demographic and ethnic composition of Rakhine State, the goal being to reduce the proportion of Rohingya. As highlighted above, the Government of Myanmar and other figures of authority have been extremely preoccupied with the demographic composition of Rakhine State, to the point of adopting specific legislation and other measures to change it. Examples include the laws and orders restricting marriages and births among the Rohingya population in northern Rakhine, but also the policy of building NaTaLa "model villages" since the 1990s. This has required the appropriation of land and the resettlement of ethnic Rakhine or other Buddhists into the area from elsewhere. The development and reconstruction efforts of the Government in the aftermath of the "clearance operations" in 2017 also indicate plans to relocate other ethnic groups on land where Rohingya villages once stood. At a more general level, the arbitrary deprivation of nationality of the Rohingya, their consequent and consistent labeling as "Bengali" or "illegal immigrants", and the protracted and unresolved nature of the "citizenship" issue also indicate a desire to rid Myanmar of the Rohingya.

1426. Against this background and the pervasive rhetoric of "uncontrollable birthrates" of Rohingya, the widespread rape and sexual violence against Rohingya women and girls, particularly in the context of the "clearance operations", may very well have been aimed at affecting their reproductive capacity. In addition to the physical destruction of reproductive capacity in cases where the genitalia were mutilated, for the reasons discussed above, Rohingya women and girls who have been raped or gang raped are significantly less likely to marry and reproduce.

[3095] ICTR, *Prosecutor v. Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Judgment, 13 December 2004, paras. 360-364; ICTY, *Prosecutor v. Popovic et al.*, IT-05-88-T, Judgment, 10 June 2010, para 1177.

[3096] ICTR, *Prosecutor v. Karemera and Ngirumpatse*, ICTR-98-44-T, Judgment, 2 February 2012, para 1597.

1427. Although an intent to alter the demographic or ethnic composition of an area is not conclusive of genocidal intent *per se*, these plans, policies and acts demonstrate an active preoccupation on the part of government and military authorities with the Rohingya presence in Rakhine State. The reduction of a protected group is also not synonymous with its destruction. It is certainly possible to imagine situations in which a particular ethnic or religious group could be encouraged or even forced to leave a defined geographical area, without the instigators possessing genocidal intent. However, in the context of the former Yugoslavia, the existence of a plan to create an ethnically homogenous state, along with evidence of an intent to exclude non-members by violence, and evidence that the targeted group could not lay claim to any specific territory, was found to support an inference that this plan of exclusion contemplated the destruction of the non-member ethnic groups.[3097] In the case of the Rohingya, the manifest intention on the part of the authorities to reduce or remove this targeted group from Rakhine State is relevant to the intention with which the criminal acts themselves ultimately occurred.

1428. A fourth set of indicators of intent in the case of the Rohingya relates to evidence of an organized plan of destruction. The existence of a plan or policy is not a legal element of the crime of genocide. However, in the context of proving genocidal intent, the existence of a plan or policy may become an important evidentiary factor.[3098] Where it is demonstrated that acts of a consistent character have been systematically directed against a protected group, such acts may support the inference of genocidal intent.[3099] To this extent, the "clearance operations" of 2016 and 2017, while perhaps unique in terms of their scope, intensity and brutality, are only one piece of a larger picture. They are arguably the result of a long-standing policy of oppression and persecution targeting the Rohingya, leading to the extreme control and securitization of the area. They are also the most immediate cause of the mass exodus of Rohingya from Myanmar.

1429. A level of organization evidencing a plan of destruction can also be demonstrated by a number of facts: that the killings were perpetrated in a systematic manner;[3100] that types of weapons and methods employed by the attackers were consistent across attacks;[3101] and that the attackers employed a consistent *modus operandi* across those attacks.[3102] The manner in which the August 2017 operations (and to a certain extent the 2016 prelude) was carried out is strikingly consistent. The operations covered a large geographic area and lasted for weeks, but victims and witnesses from across the three townships and many village tracts described the same patterns of conduct on the part of the security forces. There was a remarkable similarity in the timing of the operations, the sequence of events, the types of weapons used, the assistance received from other security forces or ethnic Rakhine, the coordination and division of roles between perpetrators, the types of violations and the manner in which they were committed. The *modus operandi* of these attacks was recognisable and consistent throughout. This could not have occurred in the absence of significant levels of forethought and organization.

[3097] ICTY, *Prosecutor v Karadzic*, IT-95-5/IT-18-1-R-61, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, 11 July 1996, para. 94.

[3098] ICTR *Prosecutor v. Jelisic*, IT-95-10-A, Judgment, 5 July 2001, para. 48; ICTY, *Prosecutor v Krstic*, IT98-33-A, Judgment, 19 April 2004, para. 225.

[3099] ICTY, *Prosecutor v Jelisic*, IT-95-10-A, Judgment, 5 July 2001, para. 47; ICTR, *Prosecutor v Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 523; ICTR, *Prosecutor v Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, paras. 93, 289, 534-535, 537; ICTR, *Prosecutor v Muhimana*, ICTR-95-1B-T, Judgment, 28 April 2005, para. 496.

[3100] ICTY, *Prosecutor v Krstic*, IT-98-33-T, Judgment, 2 August 2001, para. 547.

[3101] ICTR, *Prosecutor v Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, para. 537.

[3102] ICTY, *Prosecutor v Jelisic*, IT-95-10-T, Judgment, 14 December 1999, para. 88, ICTR, *Prosecutor v Kayishema and Ruzindana*, ICTR-95-1-T, Trial Judgment, 21 May 1999, para. 535.

1430. The response of the security forces to the ARSA attacks of 25 August 2017 was immediate – within hours. It had been preceded by a build-up of military capacity in the area over the month beforehand, and a months-long campaign of oppression that involved the removal of protective fences around Rohingya homes and the confiscation of any kind of weapon or sharp implement from Rohingya. The disarming of Rohingya paralleled the arming of ethnic Rakhine groups and militias. These elements suggest a level of pre-planning and preparation to the operations. Also relevant is the involvement of all levels of the Tatmadaw's chain of command, from the Commander-in-Chief to the foot soldier. The "clearance operations" were not planned and executed by an isolated cell of soldiers but the army as a whole. The implication of multiple levels of military command in an operation can evidence the systematic nature of the culpable acts and an organized plan of destruction, supporting an inference of genocidal intent.[3103]

1431. Consistent targeting by the perpetrators is also indicative of a level of planning and forethought.[3104] Women and girls of reproductive age were targeted for brutal rape, gang rape and sexual violence. Children were targeted for killing. There are indications that educated, wealthy and influential men, that is, the Rohingya leaders in towns and villages, were also specifically targeted. In addition to the subsequent impact on the Rohingya community's ability to rebuild itself, the specific targeting of these groups is also demonstrative of a deliberate plan or a level of organization evidencing a plan of destruction. No reasonable argument can be made that the attacks against the Rohingya population were spontaneous or random, or that they evolved in an uncoordinated or unplanned manner or that their brutality and destructiveness were aberrations. Given the importance of the existence of a plan or policy for destruction in the context of proving genocidal intent, proof of synchronized and deliberate attacks may support an ultimate finding that the prohibited acts against the Rohingya were perpetrated with the intent to destroy.

1432. A fifth set of indicators of intent revolves around the extreme brutality of the acts and campaign against the Rohingya.[3105] The brutality of an attack is relevant to whether the perpetrators acted with specific intent, given that "a brutal attack targeting several thousand members of an ethnic group is itself indicative of the requisite intent to destroy an ethnic group, in whole or in part."[3106] The fact that, for example, pregnant women and babies were not spared has been found to show an intention to "wipe out a group in its entirety."[3107] The "extent of bodily injuries" is also a relevant factor.[3108]

1433. The killing of civilians is inherently brutal in any context. The perpetrators of the "clearance operations" in Rakhine State introduced an additional dimension to this. There was not the least effort on their part to make any distinction between ARSA fighters and civilians, or to specifically target a military objective or identify and repel an immediate threat. Everyone was a target and no one was spared: mothers, infants, pregnant women, the old and infirmed all fell victim to the ruthless campaign. The targeting of women and girls for rape, gang rape and other forms of sexual violence, as well as the targeting of and impact on children in general, has been shocking. The brutality with which the underlying acts were carried out provides further support for a conclusion that they were committed with genocidal intent.

Other reasonable inferences from the available information

1434. The Mission has also considered whether the information and material collected could lead to reasonable inferences other than that the specific prohibited acts were motivated by the intent to destroy.

[3103] ICTY, *Prosecutor v Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 252.

[3104] ICTY, *Prosecutor v Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 263.

[3105] ICTY, *Prosecutor v Jelisic*, IT-95-10-A, Judgment, 5 July 2001, para. 47.

[3106] ICTR, *Prosecutor v Ndindabahizi*, ICTR-2001-71-T, Judgment, 15 July 2004, para. 461.

[3107] ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 121.

[3108] ICTR, *Prosecutor v. Muhimana*, ICTR-95-1B-T, Judgment, 28 April 2005, para. 496.

1435. First, it has considered the credibility of the Government and military authorities' official explanation that the "clearance operations" were legitimately targeted at eliminating a terrorist threat from ARSA. This official explanation appears to suggest that the operations were aimed at restoring security in Rakhine State, including by creating the conditions that would allow for even greater control and surveillance over the population. This would occur through the creation of a new physical environment, with newly built villages that are easier to control and in the vicinity of reinforced security posts. The controlled repatriation of the entire Rohingya population would then allow for managed resettlement, a rebalancing of ethnic groups, and the screening of all returnees to remove "terrorist" elements. It would also allow for the systematic imposition of NVC cards, on which a return is made conditional.

1436. This explanation is flawed. The manner in which the operations were conducted would have required that all Rohingya were "terrorists" and a legitimate target, necessitating the destruction of entire villages and communities. In reality, and as known to the Tatmadaw, ARSA posed a limited threat. The Tatmadaw had been present in the region for many years and was familiar with operational requirements. Enhanced security to eliminate the threat from an emerging, but still very small, armed group could have been implemented through far more limited, targeted and less pervasive means. Pursuing a campaign of absolute terror and brutality through gang raping women, killing babies and erasing entire villages, in the knowledge that such response is unlawful and disproportionate, reveals an alternative intent. The explicit and frequent linkage made by the Tatmadaw's Commander-in-Chief, Senior-General Min Aung Hlaing, between the operations and the "Bengali problem" the country has supposedly been facing "since 1942" further indicates that the operations were not a response to the current and specific security threat posed by ARSA.

1437. Similarly, the suggestion that the authorities may have been legitimately seeking demographic change in Rakhine State (as opposed to the destruction of the Rohingya group as such) cannot be reconciled with the scope of violence and brutality of the military, or the serious bodily and mental harm inflicted on the civilian population. Demographic change had been pursued for many years through non-violent means, albeit profoundly discriminatory and oppressive. It would not have necessitated the killing of more than 10,000 civilians, the systematic and coordinated rape of women, the mass deportation of over 725,000 people, and the destruction of entire villages.

1438. An argument that the intent may have been to displace the Rohingya population, but not to seek its ultimate destruction, falls at the same hurdle. The scale and scope of violence in its varied forms, the intensity and brutality of the attacks, and the physical destruction of Rohingya life as it once was, through the mass demolition of their villages and homes, make it difficult to consider any such inferences as reasonable. When considered against the patterns of oppression and dehumanization spanning decades and a coordinated and widely prevalent discriminatory rhetoric on the part of the very authorities entrusted with ensuring the Rohingya's safety, livelihood and protection, the picture becomes even more complete.

(d) Conclusion

1439. The attack on the Rohingya population of Myanmar was horrendous in scope. The images of an entire community fleeing from their homes across rivers and muddy banks, carrying their babies and infants and elderly, their injured and dying, will and must remain burned in the minds the international community. So will the "before and after" satellite imagery, revealing whole villages literally wiped off the map. In much of northern Rakhine State, every trace of the Rohingya, their life and community as it had existed for decades, was removed. The situation in many areas now appears to match the official narrative: "there is no group called Rohingya in Myanmar". The "clearance operations" were indeed successful.

1440. The question of whether genocidal intent exists can sometimes usefully be approached in reverse, by examining what the relevant authorities and perpetrators would have done, had they wished to destroy the target group in whole or in part. The actions of those who orchestrated the attacks on the Rohingya read as a veritable check-list: the systematic stripping of human rights, the dehumanizing narratives and rhetoric, the methodical planning, mass killing, mass displacement, mass fear, overwhelming levels of brutality, combined with the physical destruction of the home of the targeted population, in every sense and on every level.

1441. The Mission therefore concludes, on reasonable grounds, that the factors allowing the inference of genocidal intent are present. It is now for a competent prosecutorial body and court of law to investigate and adjudicate cases against specific individuals to determine individual guilt or innocence.

B. Crimes against humanity

1442. Crimes against humanity are among the gravest crimes under international law. They are particularly serious offences giving rise to grave humiliation or degradation, committed as part of a widespread or systematic attack against any civilian population.[3109] It is this specific context, indicating a scale and level of organization that shocks the conscience of humanity, which elevates "ordinary" criminal acts to those concerning the international community as a whole. In its consideration of whether established facts may amount to crimes against humanity, the Mission has relied on the definition contained in Article 7 of the Rome Statute of the ICC.[3110] Possible divergences from custom are noted where relevant.

1443. The legal threshold for crimes against humanity is high. First, it must be demonstrated that one of the prohibited acts took place, with the requisite criminal intent.[3111] Given that crimes against humanity are defined by their contextual element, it must also be demonstrated that the act was committed "as part of a widespread or systematic attack directed against any civilian population". An attack directed against any civilian population means "a course of conduct involving the multiple commission of [prohibited] acts against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack".[3112] An "attack" does not need to involve a military attack or the use of armed force; it can, for example, encompass mistreatment of the civilian population.[3113] "Directed against" requires that a civilian population be the intended primary target of the attack, rather than an incidental victim.[3114] The word "any" indicates that "civilian population" is to be understood broadly,[3115] regardless of nationality, ethnicity or any other distinguishing feature.[3116]

1444. The attack must be widespread *or* systematic. *Widespread* generally connotes a quantitative and geographic element, relating to the number of targeted persons,[3117] the multiplicity of victims,[3118] the frequency of acts,[3119] and/or the attacks occurring in different locations.[3120] *Systematic* relates to the organized nature of the acts of violence and the improbability of their random occurrence,[3121] or as organized conduct following a consistent pattern or pursuant to a policy or plan.[3122] Patterns of crimes, or the "non-accidental repetition of similar criminal conduct on a regular basis", are seen as a common expression of a systematic occurrence.[3123] An attack will be systematic when, for example, "the perpetrators employed similar means and methods to attack the different locations".[3124] Lastly, it must also be demonstrated that the perpetrator was aware of the broader context in which the actions occurred.

[3109] A. Cassese, *International Criminal Law* (3rd ed.), (Oxford University Press, Oxford, 2013), pp. 90-91.

[3110] This definition enjoys wide support among states: A/CN.4/680, International Law Commission, First report on crimes against humanity by Sean D. Murphy, Special Rapporteur, para. 122. See also A/70/10, Report of the International Law Commission, 14 August 2015, at p. 59, para. 8.

[3111] ICC Statute, art. 7(1).

[3112] ICC Statute, art. 7(2)(a).

[3113] ICC Elements of Crime, art. 7, para. 3; ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23 and IT-96-23/1-A, Judgment, 12 June 2002, para. 86.

[3114] ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Judgment pursuant to article 74 of the Statute, 20 April 2015, para. 1104; ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23-T and IT-96-23/ 1-T, Judgment, 22 February 2001, para. 421.

[3115] ICTY, *Prosecutor v. Mrksic et al.*, IT-95-13/1-T, Judgment, 27 September 2007, para. 442; ICTY, *Prosecutor v. Tadic*, IT-94-1-T, Judgment, 7 May 1997, para. 643; ICTY *Prosecutor v. Kupreskic*, IT-95-16-T, Judgment, 14 January 2000, para. 547.

[3116] ICC, *Prosecutor v. Katanga and Ngudjolo*,, ICC-01/04-01/07-717, Decision on the Confirmation of Charges, 30 September 2008, para. 399.

[3117] ICC, *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-717, Decision on the Confirmation of Charges, 30 September 2008, para. 394; ICTY, *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-A, Judgment, 17 December 2004, para. 94; *Prosecutor v. Blagojevic and Jokic*, IT-02-60-T, Judgment, 17 January 2005, paras. 545-546.

1445. These contextual elements determine whether a set of prohibited acts amount to the level of crimes against humanity. Such prohibited acts include: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity; enforced disappearance of persons; apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

1. Kachin and Shan States

(a) Underlying prohibited acts

Murder

1446. Murder is defined under international law as the unlawful and intentional killing of a human being.[3125] The death of the victim must result from an act or omission of the perpetrator, who possessed the intent to kill, or the intent to cause serious bodily harm which the perpetrator should reasonably have known might lead to death.[3126]

1447. This report details consistent and credible information establishing a pattern of violations of the right to life, with numerous unlawful killings of civilians, in Kachin and Shan States during the period under review. Many killings reported to the Mission were murders or extrajudicial executions of persons in the custody of the Tatmadaw. Other unlawful killings occurred in the context of military operations, as a consequence of indiscriminate attacks and attacks directed at civilians. Accounts were received of the Tatmadaw shooting or aiming mortar shells directly at civilians, including women and children, while they were fleeing or seeking shelter from the fighting. Victims and witnesses consistently describe how the Tatmadaw repeatedly targets individual civilians of the same ethnic background as their armed adversary, specifically affecting men between the ages of 18 and 40 years old, considered of fighting age.

[3118] A/51/10, Report of the International Law Commission on the work of its forty-eighth session, 6 May - 26 July 1996, Official Records of the General Assembly, Fifty-first session, Supplement No 10, at p. 47 (using the phrase "on a large scale" instead of widespread); ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 5 September 1998, para. 580; ICTR, *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, para. 123; ICTY, *Prosecutor v. Mrksic*, IT-95-13/1-T, Judgment, 27 September, 2007, para. 437.

[3119] ICC, *Prosecutor v. Mbarushimana*, ICC-01/04-01/10-465-Red, Decision on the confirmation of charges, 16 December 2011, para. 265, where the crimes were insufficient because, *inter alia*, they had been committed and scattered over a 6-month period.

[3120] ICC, *Prosecutor v. Ruto*, ICC-01/09-01/11-373, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para. 177.

[3121] ICC, *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-717, Decision on the Confirmation of Charges, 14 October 2008, para. 394; ICC, *Prosecutor v. Ruto*, ICC-01/09-01/11-373, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para. 179; ICTY, *Prosecutor v. Mrksic*, IT-95-13/1-T, Judgment, 27 September 2007, para. 437; ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23-T and IT-96-23/ 1-T, Judgment, 22 February 2001, para. 429.

[3122] ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 5 September 1998, at, para. 580; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, at para. 123.

[3123] ICTR, *Prosecutor v. Kunarac et al.*, IT-96-23 & IT-96-23/1-A, Judgment, 12 June 2002, para. 94.

[3124] ICC, *The Prosecutor v. Ntaganda*, ICC-01/04-02/06-36-Red, Decision on the Prosecutor's Application under Article 58, 14 July 2012, para. 31.

[3125] ICC Elements of Crime, art. 7(1)(a); ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 5 September 1998, para. 589.

[3126] ICTY, *Prosecutor v. Kvocka et al.*, IT-98-30/1-A, Judgment, 28 February 2005, para. 259.

1448. The Mission accordingly considers that there are reasonable grounds to conclude that murder as an underlying act of crimes against humanity was committed in Kachin and northern Shan States.

Enslavement

1449. Enslavement is the exercise of any or all of the powers attaching to the right of ownership over a person,[3127] meaning "the use, enjoyment and disposal of a person who is regarded as property, by placing him or her in a situation of dependence which entails his or her deprivation of any form of autonomy".[3128] This includes the purchasing, selling, lending or bartering of a person.[3129] Whether a situation amounts to enslavement depends on the control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour.[3130] Forced labour can therefore rise to the level of enslavement, even without any additional evidence of mistreatment.[3131] To determine if forced labour reaches the threshold, the question is whether "the relevant persons had no choice as to whether they would work".[3132] Moreover, the perpetrator must have intended to exercise power attaching to the right of ownership.[3133]

1450. The extent to which forced labour has been part of the lives of ethnic minorities in Kachin and Shan States is nowhere better illustrated than by a witness who told the Mission that she was not aware that the practice was illegal until she left Myanmar. In the words of another witness who had performed forced labour twice a month from the age of 12 or 13, "we have done this for our whole lives".[3134] Refusal to participate was impossible. Anything other than compliance resulted in threats or violence, with reports of soldiers shooting at individuals attempting to escape. The Mission is satisfied that none of the acts of labour described in this report was carried out as a result of the labourer's own free will, and that the Tatmadaw and security forces who managed the forced labour in many cases intentionally exercised the powers of ownership over the civilians whom they forced to work. This is evidenced by the levels of coercion, the threats, the impossibility of escape, the ill-treatment often associated with forced labour, and the fear experienced by the victims. The victims described how their lives, their activities, their movements, even their bodies were completely outside their control.

[3127] ICC Statute, art. 7(2)(c).

[3128] ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Judgment, 7 March 2014, para. 975.

[3129] ICC Elements of Crimes, art. 7(1)(c), para. 1.

[3130] ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23-T & IT-96-23/1-T, Judgment, para. 542; ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23 & IT-96-23/1-A, Judgment, 12 June 2002, para. 119; ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436, Judgment pursuant to Article 74 of the Statute, 7 March 2014, para. 976; ECCC, *Prosecutor v. Kaing Guek Eav*, 001/18-07-2007- ECCC/SC, Judgment, 3 February 2012, paras. 117-162.

[3131] ECCC, *Prosecutor v. Kaing Guek Eav*, 001/18-07-2007- ECCC/SC, Appeal Judgment, 3 February 2012, para. 126; *Prosecutor v. Kunarac et al.*, IT-96-23/IT-96-23/1, Judgment, 22 February 2001, para. 541.

[3132] SCSL, *Prosecutor v. Taylor*, SCSL-03-1-T, Judgment, 18 May 2012, para. 448; ICTY, *Prosecutor v. Krnojelac*, IT-97-25-T, Judgment, 15 March 2002, para. 359; *Trial of Major War Criminals before the International Military Tribunal*, Nuremberg, 14 November 1945 – 1 October 1946, Vol. 22 (1947), pp. 565-566; *Trial of Major War Criminals before the International Military Tribunal*, Nuremberg, 14 November 1945 – 1 October 1946, Vol. 22 (1947), at p. 579.

[3133] ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23 & IT-96-23/1-A, Judgment, 12 June 2002, para. 122.

[3134] DI-063.

1451. As to the scale and scope of the forced labour, in enslavement cases in international jurisprudence, victims were forced to carry loads, perform domestic chores, work in diamond mines,[3135] perform sexual services,[3136] plant rice, build dams, and dig canals.[3137] There was no requirement that the labourers were subject to additional ill-treatment, beyond the labour itself. The Mission considers that much of the forced labour to which the populations of Kachin and Shan States were subjected is comparable, and notes, with particular concern, those who were forced to act as "human mine sweepers", and women and girls subjected to rape and sexual violence by the military in this context.

1452. However, the practice was not permanent, even if indefinite. Although some instances of forced labour went on for months, or even years, in some cases it lasted only a day, with villagers returning home in the evenings. The duration of forced labour is relevant to whether it rises to the level of enslavement, with courts considering whether the exercise of ownership spanned a few months or only a matter of days.[3138] The importance of duration in any given case, however "will depend on the existence of other indications of enslavement".[3139] The Mission considers that, even in circumstances in which the individual periods of forced labour may have been relatively short, its endemic and pervasive nature affected entire communities. No family could expect to be safe from its grasp. The Mission has also taken into account the fact that villagers were taken for forced labour on repeated occasions and, for many, from childhood to adulthood. Further, they had no idea, neither when they were seized nor during their captivity, how long they would be held. Their fate was unknown to them and completely outside their hands. As such, it is satisfied that this conduct gives rise to reasonable grounds to consider that enslavement as an underlying act of crimes against humanity has occurred.

Forcible transfer of a population

1453. Forcible transfer is the "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law".[3140] It refers to displacement within national boundaries.[3141]

1454. The displacement must occur as a consequence of "expulsion or other coercive acts". This includes the threat of coercion or force "such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment".[3142] The determining factor is the absence of a genuine choice on the side of the victim.[3143] Fleeing to escape from violence and persecution is neither voluntary nor free choice.[3144] The crime includes "the full range of coercive pressures on people to flee their homes, including direct threats, destruction of their homes, and other acts of persecution, such as depriving members of a group of employment, or access to schools".[3145] The perpetrator does not need to intend to displace the population permanently.[3146] The forced displacement must, however, be unlawful under international law and not justified, for example, by reasons of security or military necessity.[3147] Moreover, the displaced population needs first to have been lawfully present in the territory.[3148]

[3135] SCSL, *Prosecutor v. Taylor*, SCSL-03-1-T, Judgment, 18 May 2012, para. 1738.

[3136] *Prosecutor v. Kunarac et al.*, IT-96-23/IT-96-23/1, Judgment, 22 February 2001, paras. 741-742.

[3137] ECCC, *Prosecutor v. Kaing Guek Eav*, 001/18-07-2007/ECCC/TC, Judgment, 26 July 2010, paras. 225-235.

[3138] In the case of Kunarac, for example, at the ICTY, the accused was convicted of enslavement on the basis that he abducted two girls who were kept in a house and forced to perform domestic duties and sexual services for a period of five to six months. He was not convicted in relation to a girl who had left the house "after a few days". ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23 and IT-96-23/1-A, Judgment, 12 June 2002, paras. 717-745.

[3139] ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23 and IT-96-23/1-T, Judgment, 22 February 2001, para. 542.

[3140] ICC Statute, Art. 7(1)(d); ICC Elements of Crimes, art. 7(1)(d).

[3141] ICC, Decision on the "Prosecution's Request for a Ruling on Jurisdiction under article 19(3) of the Statute", ICC-RoC46(3)-01/18-37, 6 September 2018, paras. 53-55.

[3142] ICC Elements of Crimes, art. 7(1)(d), fn. 12.

[3143] ICTY, *Prosecutor v. Krnojelac*, IT-97-25-A, Judgment, 17 September 2003, para. 229.

[3144] ICTY, *Prosecutor v. Krstic*, IT-98-33-T, Judgment, 2 August 2001, para. 530.

[3145] Christopher K. Hall in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (Baden-Baden: Nomos Verlagsgesellschaft, 1999), at p. 162.

1455. The Mission has described the Tatmadaw practice of forcing civilians from their homes in Kachin and Shan States. The Mission collected consistent accounts of villagers being ordered to leave their homes and villages, being ordered not to return, or being physically prevented from doing so. The account of a former farmer from Loilen District, Shan State, is illustrative. The Tatmadaw came to his village and told the villagers "you are no longer allowed to farm and you all need to leave the village immediately, otherwise we will burn your homes".[3149] The Tatmadaw soldiers later burned down his house, along with others in the village. The Mission has identified a widespread practice of attacking, destroying and looting civilian property, including intentional burning of civilian houses. Some victims, who tried to return after attacks, found that their land had been confiscated.

1456. The civilians who were displaced were lawfully present in the territory. Having reviewed the consistent accounts describing the displacement, the Mission considers that it was not voluntary and that those who were displaced had no choice but to flee. Recalling that "coercive acts" (and not just physical expulsion) can give rise to criminal liability, the Mission also notes the corroborated accounts of the Tatmadaw arresting civilians, confiscating food, harassing and intimidating, and generally "making it impossible to survive in our village".[3150] Given the context in which these displacements occurred, including during attacks on villages, it is difficult to see how they could have been justified by any level of military necessity. In these circumstances, the Mission considers on reasonable grounds that forcible transfer as an underlying act of crimes against humanity has occurred in Kachin and Shan States during the period under review.

Rape, sexual slavery and sexual violence

1457. Rape is an act by which "the perpetrator invaded the body of a person by conduct resulting in penetration of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body".[3151] This invasion must be "committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent".[3152]

1458. Sexual slavery is a particularly serious form of enslavement. As well as exercising any or all of the powers attaching to the right of ownership over the person(s), the perpetrator must also cause the person to engage in one or more acts of a sexual nature.[3153] A commercial transaction is not required, as the notion of servitude relates primarily to "the impossibility of the victim's changing his or her condition".[3154] Sexual slavery also encompasses situations where women and girls are forced into "marriage", domestic servitude, or other forced labour involving compulsory sexual activity, including rape, by their captors.[3155]

[3146] ICTY, *Prosecutor v. Stakic*, IT-97-24-A, Judgment, 22 March 2006, paras. 278, 307; ICTY, *Prosecutor v. Brdjanin*, IT-99-36-A, Judgment, 3 April 2007, at para. 206.

[3147] Article 49 of Geneva Convention IV Relative to the Protection of Civilians; ICRC/Customary IHL, rule 129.

[3148] ICC Elements of Crimes, art. 7(1)(d), para. 2.

[3149] PI-082.

[3150] PI-035.

[3151] ICC Elements of Crimes, art. 7(1)(g)-1, para. 1.

[3152] ICC Elements of Crimes, art. 7(1)(g)-1, para. 2.

[3153] ICC Elements of Crimes, art. 7(1)(g)-2, para. 2.

[3154] ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 976.

1459. The definition of crimes against humanity also lists "other sexual violence of comparable gravity" as a prohibited underlying act. This covers cases where the perpetrator committed an act of a sexual nature or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.[3156] The conduct must be of comparable gravity to rape, sexual slavery, enforced prostitution, forced pregnancy and forced sterilisation.

1460. Sexual violence has been a feature of military presence and offensives in Kachin and Shan States.[3157] Despite presumed significant underreporting, the Mission has found a significant number of corroborating accounts of the Tatmadaw targeting women and girls for sexual violence in various forms. It notes that the prevalence of rape and sexual violence committed by soldiers and groups of soldiers, including in the presence of (or by) senior military officers, reflects a widespread culture of tolerance, if not an explicit policy, of humiliation and denigration. Consistently, women who managed to fight or escape were later looked for by their attackers, who came to their homes and threatened and physically abused the victims' family members and destroyed or confiscated property.

1461. The Mission also established a pattern of sexual violence perpetrated as torture or ill-treatment against men. This report details accounts from victims who were forced to undress and rape each other in front of SaYaPa agents who laughed as the victims begged to stop.[3158] SaYaPa agents rubbed the penis of one victim until the skin was torn and bleeding.[3159] The perpetrators took advantage of a coercive environment of detention, and their position of power, to force the detainees to perform these acts.

1462. The penetration of the victims' bodies was committed by force or threat of force or coercion, detention, abuse of power, or by taking advantage of a coercive environment. Forcing victims to perform sexual acts on one another and injuring sexual organs fall within the scope of "other acts of sexual violence of comparable gravity". The Mission considers that there are reasonable grounds to conclude that rape and other forms of sexual violence as underlying acts of crimes against humanity were committed in Kachin and Shan State.

1463. Further investigation is needed to determine the scale and nature of sexual slavery and forced marriage as underlying acts of crimes against humanity. The Mission received a limited amount of information on these practices, including two accounts from victims, which are consistent with prior United Nations reports.

1464. Although rape and other forms of sexual violence are separately criminalised, the Mission recalls that these acts have also been found to amount to torture.[3160] During the acts of rape and sexual violence, the perpetrators undoubtedly inflicted severe physical or mental pain or suffering on victims who were in their custody and control. The Mission accordingly notes that the acts of rape and sexual violence by Tatmadaw forces and others against civilians in Kachin and Shan States may also give rise to criminal liability for torture.

[3155] ICC, *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-717, Decision on the confirmation of charges, 30 September 2008, para. 431.

[3156] ICC Elements of Crimes, art. 7(1)(g)-6, para. 1.

[3157] A/HRC/31/71, p.11; A/66/365, p.11.

[3158] PI-052.

[3159] PI-055.

[3160] ICTY, *Prosecutor v. Mucic et al.*, IT-96-21-T, Judgment, 16 November 1998, para. 496. See also ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 731.

Imprisonment, torture and enforced disappearance

1465. Imprisonment as a crime against humanity occurs when the perpetrator imprisons one or more persons or otherwise severely deprives them of their liberty.[3161] The imprisonment must be arbitrary.[3162] Factors to be considered when determining whether imprisonment has occurred are whether (i) there was a valid warrant of arrest; (ii) the detainee was informed of the reason for his arrest; (iii) the detainee was formally charged; and (iv) the detainee was informed of any procedural rights.[3163] The mere fact that civilians had some freedom of movement does not necessarily mean that they were not deprived of their liberty and thus unlawfully imprisoned or confined.[3164]

1466. Torture is the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of a perpetrator. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.[3165] A severe degree of pain and suffering has to be reached in order for a criminal act to amount to an act of torture.[3166] The perpetrator must have intended the conduct and that the victim endured severe pain or suffering.[3167]

1467. Enforced disappearance means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of liberty or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.[3168]

1468. The Tatmadaw's overarching assumption, that everyone of a given ethnicity supports the associated "ethnic armed organization", led to a widespread pattern of arbitrary arrest and detention of civilians in Kachin and Shan States throughout the period under review. Arbitrary detention for the purpose of forced labour occurred and the Mission received accounts of mass arrests and detention. Victims have been held incommunicado in unofficial places of detention for periods between a day and two years. Most victims of arbitrary arrest were not informed of the reason of arrest, and they were not brought before a judge. The Mission considers that there are reasonable grounds to conclude that imprisonment without due process as an underlying act of crimes against humanity was committed.

1469. Imprisonment and forced labour provided the backdrop against which civilians were tortured or ill-treated. Demands for information about EAOs were accompanied by beatings and other ill-treatment, through which the perpetrators intentionally inflicted severe pain and suffering. None of these acts of violence was a lawful sanction, but severe physical and mental abuse of detainees who were under custody and control, and thus in a position of inferiority. Violence was also inflicted on civilians who were not otherwise detained, in villages or towns, in houses, forest areas, monasteries, and military camps. The level of pain and suffering inflicted is considered by the Mission to have consistently reached a level justifying the legal qualification of torture, particularly when considering the institutionalisation of the ill-treatment, the physical and mental impact on the victims, the respective positions of the perpetrator and their victims, and the methods used which include: beating with a bamboo stick or metal rod, using death threats and instilling a fear of being killed, rape and sexual violence, burning skin with hot knives or cigarette butts, pouring hot wax, jabbing the skin with needles or sharp knives, making victims dig their "own" graves, and killing or raping or torturing other detainees in front of a victim. The Mission considers that there are reasonable grounds to conclude that torture as an underlying act of crimes against humanity was committed against civilians in Kachin and Shan States.

[3161] ICC Elements of Crimes, art. 7(1)(e).

[3162] ICTY, *Prosecutor v Krajisnik*, IT-00-39-T, Judgment and Sentence, 27 September 2006, para. 752.

[3163] ICTR, *Prosecutor v. Ntagerura et al.*, ICTR-99-46-T, Judgment, 25 February 2004, para. 702.

[3164] ICTY *Prosecutor v Prlic et al.*, IT-04-74-A, Judgment, 29 November 2017, para. 473.

[3165] ICC Statute, art. 7(2)(e).

[3166] A/RES/39/46, United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 1; ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor, para. 193.

[3167] ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor, para. 194.

[3168] ICC Statute, art. 7(2)(i); United Nations General Assembly Resolution 47/133, United Nations Declaration on the Protection of All Persons from Enforced Disappearances, 18 December 1992, preamble.

1470. Many victims remain unaccounted for. The lack of compliance with procedural safeguards for detention, which should protect against disappearance, meant that family members were frequently unaware of the whereabouts of their detained relatives until they escaped, were released, or were transferred to official places of detention. In some cases, this was weeks or months later. In other cases, arrested individuals never returned and their families still do not know their fate. The Mission received accounts of cases where individuals were detained by the Tatmadaw and later found dead, often buried. It appears that efforts are made to intentionally conceal the fate and remains of individuals who were killed during detention. The victim's effective removal from the protection of the law, and the subsequent absence of information or real avenues for recourse for family members, mean that in many of the cases the legal standard of enforced disappearance is met. Accordingly, there are reasonable grounds to conclude that enforced disappearance as a crime against humanity was committed against civilians in Kachin and Shan States.

Persecution

1471. Persecution as a crime against humanity is the intentional and severe deprivation of fundamental rights contrary to international law, by reason of the identity of the group.[3169] Persecution requires (i) a gross or blatant denial (ii) on discriminatory grounds (iii) of a fundamental right, laid down in international customary or treaty law, (iv) reaching the same level of gravity as other crimes against humanity.[3170] Persecution is characterised by discriminatory intent: the perpetrator must have acted with the intent to harm the victim because he or she belongs to a particular community or group.[3171] The Statutes of the ICTY and ICTR prohibited persecution on political, racial or religious grounds.[3172] The ICC Statute expands the list to include national, ethnic, cultural, gender or other grounds "universally recognised as impermissible under international law".[3173]

1472. Under the ICC Statute, persecution can only be prosecuted in connection with any other crime within the jurisdiction of the Court.[3174] For this reason, persecution is an "umbrella" crime that requires that particular acts or omissions that already constitute crimes in themselves amount to persecution (for example, persecution through rape or persecution through torture).[3175] In considering the gravity threshold, acts should not be considered in isolation but examined in context and with consideration of cumulative effect.[3176] Evidence of discriminatory intent can be inferred contextually, with relevant factors including "the general attitude of the alleged perpetrator as demonstrated by his behaviour", for example, the use of derogatory language in relation to a particular group (even where such usage is commonplace)[3177] or the fact that the acts were only inflicted on members of one group.[3178]

1473. The violent acts against ethnic and religious minorities in Kachin and Shan States have occurred in a context of severe and long-standing discrimination on the basis of their ethnicity and religion. Corroborated accounts reveal a pattern of use of derogatory language against members of ethnic or religious minorities. As recounted by one witness, "Tatmadaw soldiers don't treat us like humans, they treat us like animals. They look at us like we shouldn't even exist. Even though the name is Kachin State, they don't think Kachin should be there and exist."[3179] Ethnic slurs during the commission of gross human rights violations and the treatment of people as inferior or "sub-human" have been regularly reported.

[3169] ICC Statute, art. 7(2)(g).

[3170] ICTY, *Prosecutor v. Kupreskic et al.*, IT-95-16-T, Judgment, 14 January 2000, para. 621.

[3171] ICTY, *Prosecutor v. Karadzic*, IT-95-5/18-T, Judgment, 24 March 2016, para. 500.

[3172] ICTY Statute, art. 5(h); ICTR Statute, art. 3(h).

[3173] ICC Statute, art. 7(2)(g).

[3174] ICC Statute, art. 7(1)(h).

[3175] ICTY, Prosecutor v. *Stanisic and Zupljanin*, IT-08-91-T, Judgment, 27 March 2013, para. 67; ICTY, *Prosecutor v. Kupreskic et al.*, IT-95-16-A, Judgment, para. 98.

[3176] ICTY, *Prosecutor v. Kupreskic et al.*, IT-95-16-A Judgment, 23 October 2001, para. 615; ICTY, *Prosecutor v. Popovic et al.*, IT-05-88-A, Judgment, 30 January 2015, para. 766.

[3177] ICTY, *Prosecutor v. Popovic et al.*, IT-05-88-A, Judgment, 30 January 2015, para. 713.

[3178] ICTY, *Prosecutor v. Kvocka et al.*, IT-98-30/1-A, Judgment, 28 February 2005, para. 366.

1474. Acts of imprisonment and torture in Kachin and Shan States during the period under review had an ethnic element. Victims were often met with the Tatmadaw's verbal denigration of religious identities during interrogations. Rapes and sexual violence were regularly accompanied by derogatory behaviour such as insults, spitting and physical abuse. One Christian victim of torture was made to imitate Jesus on a cross like the crucifixion.[3180] Rape victims reported that the perpetrators called them "Kachin bitch" or compared them to dogs.[3181] One witness of a gang rape of two girls heard the perpetrators say, "We will torture you Kachin bitches until you are extinct".[3182] The use of such derogatory language and insults during the commission of rape and sexual abuse gives rise to an inference that these acts were indeed committed with discriminatory intent, indicating that the victims were at least in part targeted for their ethnic or religious backgrounds.

1475. The Mission received information indicating that the Tatmadaw has destroyed and ransacked churches and religious objects. In some cases, they then erected pagodas. Although the destruction of property is not listed a crime against humanity, "depending on the nature and extent of destruction, and if committed with discriminatory intent, the destruction of property can be of equal gravity" and as such may constitute persecution.[3183] The significance of targets such as churches and other religious objects would be known to the Tatmadaw soldiers who targeted them. Their deliberate replacement with pagodas (the symbolic replacement of one religion with another) demonstrates the discriminatory nature of these acts. This warrants further investigation.

1476. The imposition and maintenance of restrictive measures, the destruction of property, and the frequent occurrence of imprisonment, torture, rape and sexual violence infringed upon and denied the fundamental rights of civilians in Kachin and Shan States, as laid down in customary international law and treaty law. These acts were also discriminatory in fact, selectively and systematically targeting ethnic and religious minorities within the population.[3184] On the basis of the overall pattern of conduct, the Mission considers there are reasonable grounds to conclude that the perpetrators carried out these actions with the intent to discriminate against these ethnic and religious minorities. As such, there are reasonable grounds to conclude that persecution as an underlying act of crimes against humanity was committed in Kachin and Shan States during the relevant period.

(b) Contextual elements of crimes against humanity

1477. Members of the civilian population of Kachin and Shan States have been the victims of a campaign that not only resulted in the large-scale loss of life but also left no aspect of ordinary life untouched. The acts perpetrated as part of this campaign will rise to the level of crimes against humanity if they were committed "as part of a widespread and systematic attack directed against any civilian population". An "attack", however, is not limited to the exercise of armed force.[3185] Rather than meaning a military operation, the term "attack" is used to distinguish between a mere aggregate of random acts (which do not rise to the requisite level) and a series or overall flow of events.[3186] An "attack" can be, for example, a campaign of mistreatment carried out against a civilian population and can precede, outlast or run parallel to an armed conflict.[3187]

[3179] QI-094.

[3180] PI-056.

[3181] PI-004, PI-023.

[3182] PI-069.

[3183] ICTY, *Prosecutor v. Blaskic*, IT-95-14-A, Judgment, 29 July 2004, para. 146, 149; ICTY, *Prosecutor v. Karadzic*, IT-95-5/18-T, Judgment, 24 March 2016, para. 531.

[3184] ICTY, *Prosecutor v. Stanisic and Zupljanin*, IT-08-91-T, Judgment, 27 March 2013, paras. 226, 283.

[3185] ICTY, *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-A, Judgment, 17 December 2004, para. 666.

[3186] ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3343, Judgment, 21 March 2016, para. 149.

1478. The Mission considers that the underlying acts outlined above were committed in the context of an *attack on the civilian population* of Kachin and Shan States. At the core of this attack was the overriding assumption on the part of the Tatmadaw that everyone of a given ethnicity supported the associated "ethnic armed organization". This coloured all the Tatmadaw's dealings with civilians and led to a widespread and systematic campaign of abuses against them. Civilians were detained, interrogated, tortured and killed. Many detained have disappeared with no trace, let alone official record, of their whereabouts. Forced labour has been endemic for years, leaving victims exposed to ill-treatment and with no possibility to escape. Rape and sexual violence against women and girls have been prevalent. Forced displacement of families and entire villages resulted not only from direct orders, threats and the destruction of houses, but from the Tatmadaw's concerted efforts to make the conditions of life so unbearable that these families would flee their houses, land and community. The Mission is satisfied that these multiple acts constitute a course of conduct and not merely isolated and random acts. This was a multi-faceted attack on a civilian population and gave rise to crimes that should concern the international community as a whole.

1479. The Mission further considers that the attack was *widespread*. This criterion relates to the number of targeted persons, the multiplicity of victims, the frequency of acts, and/or the attacks occurring in different locations. In the case of the attack on the civilian population of Kachin and Shan States, the violence and mistreatment were not confined to a particular location, over a limited period of time. Men, women and children, through many village tracts across two states, were affected, over a period of years. Although the *widespread* nature of the attack obviates the requirement that it be *systematic*, this second criterion is also met. *Systematic* relates to the organized nature of the crimes and the improbability of their random occurrence.[3188] Nothing about the Tatmadaw's approach to the civilian population was random or spontaneous. Nor were these abuses merely the acts of isolated platoons on a crime spree. This was a consistent pattern of organized conduct,[3189] following a plan that had been decided by high-level commanders, and it was being implemented steadily and methodically by a large body of physical perpetrators, across the targeted villages.

1480. As concerns the requirement that the attack was committed "pursuant to or in furtherance of a state or organizational policy", this requirement was designed to ensure that an attack, even if carried out over a large geographical area or directed at a large number of victims, still be organized and following a regular pattern. In the present case, there are reasonable grounds to consider that the underlying acts were committed in furtherance to a Tatmadaw policy to attack the civilian population which it associated with its military adversaries. The Mission recalls that the policy in question need not be formally promulgated, and can be deduced from the repetition of acts.[3190] In this case, the repeated killings, acts of rape and sexual violence, enslavement, enforced disappearances, torture, forcible transfer, among others, perpetrated by the Tatmadaw and other security forces in Kachin and Shan States strongly support an inference that such a policy exists. Moreover, they suggest the continued implementation of the Tatmadaw's long-standing "four cuts" counterinsurgency policy, which has the deliberate targeting of civilians at its heart. The policy may be made "either by groups of persons who govern a specific territory or by any organization with the capability to commit a widespread or systematic attack against a civilian operation".[3191] The Tatmadaw had this capacity and acted upon it.

[3187] ICTY, *Prosecutor v. Blagojevic and Jokic*, IT-02-60-T, Judgment, 17 January 2005, para. 543.

[3188] ICC, *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-717, Decision on the Confirmation of Charges, 14 October 2008, para. 394; ICC, *Prosecutor v. Ruto*, ICC-01/09-01/11-373, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para. 179; ICTY, *Prosecutor v. Mrksic*, IT-95-13/1-T, Judgment, 27 September 2007, para. 437; ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23-T and IT-96-23/ 1-T, Judgment, 22 February 2001, para. 429.

[3189] ICTR, *Prosecutor v. Akayesu* ICTR-96-4-T, Judgment, 5 September 1998, para. 580.

[3190] ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 1109.

1481. The Mission is satisfied that the contextual elements of crimes against humanity are present and, therefore, that the serious human rights violations in northern Myanmar outlined in this report will in many instances amount to crimes against humanity.

2. Rakhine State

(a) Underlying prohibited acts

Murder and extermination

1482. As outlined above, including in the section discussing killings as an underlying act of genocide, the killings carried out in the context of the "clearance operations" in Rakhine State were horrific in scale, scope, brutality and intensity. The Mission has concluded that the estimated number of more than 10,000 deaths during the August-September 2017 "clearance operations" alone is likely to be conservative. There is no doubt that the perpetrators acted with the intent to kill or with the intent to cause serious bodily harm which they should reasonably have known might lead to death, thus amounting to murder as an underlying act of crimes against humanity.

1483. The question then becomes whether there are reasonable grounds to consider that extermination has also occurred. Extermination differs from murder, in that killings must occur on a "mass" or "large" scale.[3192] Each situation necessarily turns on its facts and there is no "numerically significant" threshold which satisfies the underlying act of extermination.[3193] However, a review of comparable cases is instructive. In Syria, the United Nations found reasonable grounds to believe that detention killings which occurred "with high frequency over a long period of time and in multiple locations" amounted to extermination as a crime against humanity. The report refers to "thousands" of detained people missing.[3194] The mass killing of Rwandan Tutsi was repeatedly found to have met the threshold for extermination.[3195] In the former Yugoslavia, the killing of at least 1,699 victims was found to satisfy the "element of massiveness" required for extermination.[3196] With this high threshold in mind, the Mission finds that there are reasonable grounds to conclude that the deliberate and unlawful killings of Rohingya civilians in the Rakhine State in August-September 2017 amount to the underlying act of extermination as a crime against humanity.

Enslavement

1484. Recalling that forced labour can amount to enslavement in certain circumstances, the Mission notes that it was a feature of Rohingya life, as it was for many other groups in Myanmar. Forced to porter, cultivate and harvest farmland, build roads and buildings, and maintain the security forces' camps, the civilian population was an unpaid labour source for the Tatmadaw in Rakhine State.

[3191] ICC, *Prosecutor v. Katanga and Ngjudolo*, ICC-01/04-01/07-717, Decision on the Confirmation of Charges, 14 October 2008, para. 396.

[3192] ICC Elements of Crime, art. 7(1)(b); ICTR, *Prosecutor v. Bagosora et al.*, ICTR-98-41-A, Judgment, 14 December 2011, para. 394; ICTR, *Prosecutor v. Rukundo*, ICTR-2001-76-A, Judgment, 20 October 2010, para. 185; ICTR, *Prosecutor v. Seromba*, ICTR-2001-66-A, Judgment, 12 March 2008, para. 189.

[3193] ICTY, *Prosecutor v Brdjanin*, IT-99-36-T, Judgment, 1 December 2004, para. 391; ICTY *Prosecutor v. Stakic*, IT-97-24-T, Judgment, para. 640.

[3194] A/HRC/31/CRP.1, para. 4.

[3195] ICTR, *Prosecutor v. Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Judgment, 13 December 2004, para. 516; ICTR, ICTR, *Prosecutor v. Seromba*, ICTR-2001-66-A, Judgment, 12 March 2008, para. 190; ICTR, *Prosecutor v. Munyakazi*, Judgment, ICTR-97-36A-A, 28 September 2011, para. 142.

[3196] ICTY, *Prosecutor v Brdjanin*, IT-99-36-T, Judgment, 1 December 2004, para. 465.

1485. The labour was mandatory, with usually Tatmadaw soldiers showing up and demanding villagers to follow. Victims' accounts of labourers being beaten for working slowly or inefficiently indicate that there was no opportunity to refuse to work or to control working conditions. The Mission is satisfied that none of these acts were carried out as a result of the labourer's own free will and that the Tatmadaw and security forces who managed the forced labour intentionally exercised the powers of ownership over the civilians whom they forced to work. The fact that, in some cases, there was an option of paying a bribe to avoid forced labour does not undermine its involuntariness, even for the few who could afford to pay.

1486. Forced labour was also imposed on ethnic Rakhine, who have suffered similar violations. The accounts collected by the Mission point to the practice being widespread, particularly in more remote, rural areas. It is apparent that the Tatmadaw have consistently used men, women and children to perform forced labour, often accompanied by ill-treatment, throughout the period under review. For those ethnic Rakhine forced to perform labour, there was no escape. A former porter explained "If we ran, we would be shot".[3197] The Mission is accordingly satisfied that the Tatmadaw and security forces who managed the forced labour intentionally exercised the powers of ownership over the civilians whom they forced to work.

1487. The Mission therefore considers on reasonable grounds that certain acts of forced labour against both the Rohingya and the ethnic Rakhine have amounted to enslavement as an underlying act of crimes against humanity.

Deportation and forcible transfer of a population

1488. Deportation and forcible transfer are separate crimes[3198] that arise in situations of "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law".[3199] Deportation refers to displacement across an international border, and forcible transfer refers to displacement within national boundaries.[3200]

1489. The 2017 "clearance operations" resulted in the displacement of over 725,000 Rohingya, principally across the border into Bangladesh. This mirrored the exodus of 2016, then comprising approximately 87,000 Rohingya, but on an even more shocking scale. An entire population was effectively displaced *en masse*. The Rohingya left their homes and land behind following express orders from the Tatmadaw, or fled mass violence, killings, and the destruction of property. The determinative factor for the crime is the absence of a genuine choice on the part of the victim,[3201] when assessed in the light of the surrounding circumstances.[3202] No reasonable suggestion can be made that the displacement of the Rohingya from their homes and villages was a result of a genuine choice. The choice to flee violence and persecution is neither voluntary nor free.[3203] On its face, the appalling conditions awaiting in the Bangladesh camps, as well as the circumstances of the journey itself, undermine any such argument. Nor is there any indication that this mass displacement of an entire geographical region was justified under international law by, for example, security or military necessity.[3204]

[3197] DI-028. Also CI-153.

[3198] ICC, Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", ICC-RoC46(3)-01/18-37, 6 September 2018, para. 53.

[3199] ICC Rome Statute, art. 7(2)(d).

[3200] ICC, Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", ICC-RoC46(3)-01/18-37, 6 September 2018, paras. 53-55.

[3201] ICTY, *Prosecutor v. Krnojelac*, IT-97-25-A, Judgment, 17 September 2003, para. 229.

[3202] ICTY, *Prosecutor v. Stakic*, IT-97-24-A, Judgment, 22 March 2006, para. 279; *Prosecutor v. Martic*, IT-95-11-T, Judgment, 12 June 2007, para. 108.

[3203] ICTY, *Prosecutor v. Krstic*, IT-98-33-T, Judgment, 2 August 2001, at para. 530.

[3204] Article 49 of Geneva Convention IV Relative to the Protection of Civilians. See also ICRC/Customary IHL, rule 129.

1490. The Mission notes that the displaced population needs to first have been lawfully present in the territory.[3205] The words "lawfully present" should not be equated to the legal concept of lawful residence. Whether the person meets the formal requirements for residency or whether he or she has been accorded such status is irrelevant. The protection is provided for those who have, for whatever reason, come to "live" in a community whether long term or temporarily.[3206] The Rohingya in Rakhine State "lived" in their respective homes and villages, in accordance with this definition. While in principle national law determines the lawfulness of the presence of the persons concerned, national law must also be measured against the yardstick of international law. National law cannot terminate lawful presence in violation of applicable rules of international law.[3207] The Rohingya's arbitrary deprivation of nationality cannot be invoked by the State to argue that the Rohingya's presence in Rakhine State would be unlawful or would have become unlawful. Their labelling by the State as "Bengali" or "illegal immigrants" is irrelevant. As such, the Mission finds reasonable grounds to conclude that deportation as an underlying act of crimes against humanity have occurred.

1491. The Mission further considers that the forcible transfer of Rohingya communities into displacement camps and sites in central Rakhine may also rise to an underlying act of crimes against humanity. Following the violence in 2012, approximately 128,000 Rohingya have been kept in tightly controlled "IDP camps" for over six years, where they are still being kept today, surrounded and controlled by security forces. The Rohingya (and Kaman) who are residing in these camps and sites have been coerced into them and are not allowed to leave and return to their homes.

Imprisonment, torture, and enforced disappearance

1492. The present report details widespread and systematic arbitrary arrest and detention of the Rohingya community in Rakhine State by various law enforcement agencies, including the BGP, previously NaSaKa, and the Tatmadaw. The practice was particularly prevalent in northern Rakhine State. Arrests generally occurred during night raids on villages, in houses or shops, at checkpoints or during house searches or household list verifications. While arbitrary arrest and detention occurred throughout the period, there have been significant spikes during periods of heightened tension, such as the 2012 violence and the post-October 2016 security operations.

1493. The report further outlines numerous incidents of arbitrary arrest and detention in the context of the "clearance operations", often amounting to enforced disappearances – with information suggesting that mostly young men, together with respected or influential individuals, were targeted. Frequently men and boys have not been seen again, and their whereabouts are unknown. In most cases, there is no indication of any valid justification for arrest, basic procedural safeguards or due process. Often men were just taken away, often in large groups. These detainees still missing have been effectively removed from the protection of the law, and have no recourse to applicable legal remedies or procedural guarantees. Their whereabouts have been concealed, with their families having no recourse to seek clarification.

1494. Accounts of arrest and detention were frequently associated with violence, beating and ill-treatment. The Mission established patterns of severe ill-treatment of prisoners at Buthidaung prison following the 2012 violence. It considers the level of pain and suffering inflicted on the detainees to have consistently reached a level justifying the legal qualification of torture, particularly when considering the physical and mental impact on the victims, the respective positions of the perpetrator and their victims, and the methods used.

[3205] ICC Elements of Crimes, art. 7(1)(d), para 2.

[3206] ICTY, *Prosecutor v. Popovic et al.*, IT-05-88-T, Judgment, 10 June 2010, para. 900.

[3207] G. Werle, *Principles of International Criminal Law* (TMC Asser Press, 2009), p. 241.

1495. As such, the Mission considers that there are reasonable grounds to conclude that the underlying acts of imprisonment, enforced disappearance and torture have been committed in Rakhine State during the period under review.

Rape, sexual slavery and sexual violence

1496. The rape and gang rape of Rohingya women and girls was a gruesome feature of all "major" incidents described in this report, in at least 10 village tracts across three townships. The pervasiveness of rape and gang rape, the similarity in its occurrence across the region, and the attitude of the perpetrators towards their Rohingya victims demonstrate the pre-planned nature of these acts of sexual violence. The Mission was particularly struck by the frequency of large-scale gang rape involving multiple perpetrators and victims, often in locations specifically chosen such as houses, military or police compounds. These were not the random acts of a few criminal soldiers; this was an orchestrated attack by the Tatmadaw on Rohingya mothers, wives, sisters and daughters. At the same time, rape and sexual violence in Rakhine State was not born out of the 2017 "clearance operations". The Tatmadaw, police, NaSaKa (and later the BGP) had perpetrated rapes and gang rapes throughout the reporting period. The Mission considers that rape as an underlying act of crimes against humanity has been committed.

1497. The Mission also recalls that, in the weeks before and during the "clearance operations" in 2017, young Rohingya women and girls were routinely "selected" by members of the Tatmadaw or police, or were summoned to present themselves at military or police compounds under threat of punishment of the entire village. These women and girls were detained and subjected to rape, gang rape, sexual assault and other forms of sexual violence while in captivity. Some of these instances of abduction, detention and sexual abuse amount to acts of sexual slavery. During these periods, the victims were deprived of their liberty by armed personnel, who used threats, force and other forms of physical and mental coercion to demand compliance and prevent escape. Those abducted were forced to engage in acts of a sexual nature and were physically under the control of the perpetrators. The Mission is satisfied that it was impossible for these women and girls to control or change their situation.

1498. Tatmadaw soldiers also mutilated the breasts or sexual organs of Rohingya women and girls and subjected them to forced nudity. In some circumstances, incidents of forced nudity and sexual assault have taken place during invasive body searches by the security forces. Such conduct falls within the legal definition of "other forms of sexual violence of a comparable gravity". The Mission also recalls that acts of rape and sexual violence have also been found to amount to torture.[3208] During the acts of rape and sexual violence perpetrated in Rakhine State detailed in this report, the perpetrators inflicted severe physical or mental pain or suffering on one or more persons, who were in their custody and control. The Mission accordingly notes that the acts of rape and sexual violence by Tatmadaw forces against members of the Rohingya community detailed in this report may also give rise to criminal liability for torture.

Persecution

1499. The Rohingya in Rakhine State have faced, and continue to face, endemic discrimination on the basis of their ethnicity and religion. Discrimination is embedded in the policies and practices that have marginalised Rohingya, to the point of amounting to a situation of severe, systemic and State-sanctioned oppression. The Tatmadaw and other security forces have played an active role in this system of oppression by adopting or implementing discriminatory restrictions on movement, managing checkpoints, and overseeing the implementation of the discriminatory policies and practices of the State. At the level of the direct perpetrators, the Mission has received consistent accounts of criminal acts being perpetrated with discriminatory intent, often accompanied with deeply offensive and derogatory slurs. The question is whether these discriminatory acts are of such a gravity and severity as to constitute persecution as a crime against humanity.

[3208] ICTY, *Prosecutor v. Mucic et al.*, IT-96-21-T, Judgment, 16 November 1998, para. 496; ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 731.

1500. The imposition and maintenance of restrictive measures can amount to persecution either when considered in isolation or together with other acts.[3209] In the case of the Rohingya in Rakhine State, the scope of discriminatory policies and their arbitrary and inequitable implementation amount to a gross denial of a large number of fundamental rights recognized in customary and treaty law. The imposition and maintenance of these measures, particularly when considered collectively, served to strip the Rohingya of both their essence as a group and their individual humanity. They are, in the view of the Mission, of equal gravity to other crimes against humanity, are discriminatory in fact, and were carried out with the requisite discriminatory intent by the perpetrators on ethnic and religious grounds.

1501. The Mission also considers that there are reasonable grounds to conclude that many of the acts of murder, rape, and torture committed against the Rohingya meet the requisite criteria for the crime of persecution, given the discriminatory elements underpinning their perpetration. They were committed in a context of a pervasive climate of hatred and contempt toward the Rohingya, who were consistently called "illegal immigrants" and associated with "violent Islam" or "terrorism". The Mission has received numerous accounts of specific utterances of direct perpetrators that reveal a deeply discriminatory intent, including the offering to spare a victim from rape if she renounced Islam[3210], repeated statements that "this is not your country" while calling victims "kalar", and similar comments. Religious clothing and symbols were targeted; men had their beards forcibly removed.

1502. These discriminatory statements, utterances and abuse indicate that the perpetrators of these attacks intended to target the victims precisely because of their inclusion in the Rohingya group and, as such, acted with the requisite discriminatory intent on ethnic and religious grounds. The Mission also considers that the acts of rape and sexual violence against the Rohingya in Rakhine State may amount to persecution on the grounds of gender. The ubiquity of rape, gang rape and other forms of sexual violence by the Tatmadaw in northern Rakhine State suggests that women were specifically targeted based on gender. The argument that rape and sexual violence is inherently discriminatory is particularly significant in this context; sexual violence is used as a means of undermining traditional gender roles and breaking down familial bonds by leveraging the cultural stigma around sexual violence.

Apartheid

1503. The Rome Statute includes the crime of apartheid as a crime against humanity.[3211] Apartheid occurs when the underlying acts listed in the definition of crimes against humanity, or other inhumane acts of a "similar nature and gravity", are "committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups". The perpetrator must commit the inhumane act with the specific intent of maintaining the institutionalized regime.[3212]

1504. These concepts have not yet been judicially considered and uncertainty surrounds the definition, delineation and interpretation of the crime of apartheid. Whether apartheid as a crime against humanity is a customary norm is also unsettled.[3213] Guidance, however, on its intended scope can be drawn from the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973), ratified by 109 States, which also criminalizes apartheid as a crime against humanity. [illegible]sion considers it appropriate to examine the possible commission of the crime of apartheid in the context of the Rohingya, particularly given the deeply discriminatory dimension of the facts as established in this report.

[3209] ICTY, *Prosecutor v. Brdjanin*, IT-99-36-A, Judgment, 3 April 2007, paras. 295, 297; ICTY, *Proseutor v. Karadzic*, IT-95-5/18-T, Judgment, 24 March 2016, paras. 535-536.

[3210] EI-072.

[3211] ICC Statute, art. 7(2)(h).

[3212] ICC Elements of Crimes, art. 7(1)(j)

[3213] C. Lingaas, "The Crime against Humanity of Apartheid in a Post-Apartheid World", *Oslo Law Review (2015), nr. 2*, 86-115; A. Cassese, *International Criminal Law (2nd ed.)*, (Oxford University Press, Oxford, 2008), p. 13.

1505. Turning firstly to the contextual elements, an "institutionalized regime" of systematic domination and oppression has been thought to mean "an established law or practice by a government or prevailing order".[3214] For the reasons discussed elsewhere, the Mission considers that the Myanmar authorities have imposed an established practice of oppression on the Rohingya who, for the reasons discussed above, may be considered a racial group. The regime against the Rohingya is not a series of random occurrences but an overarching regimen of restrictions and abuses, that operate to cumulatively remove rights and erode the community's dignity. The removal of legal status, combined with the inability to move, work, access medical care, support families, or even own knives or live behind fences, is part of a considered and deliberate system. When combined with hateful rhetoric and propaganda, the Rohingya have been marginalised, impoverished, excluded, and placed firmly in the camp of the "other". The "domination by one racial group over another" has been accomplished.

1506. The underlying acts giving rise to the crime of apartheid are those listed in the definition of crimes against humanity, as well as other acts of "similar nature and gravity".[3215] In the absence of jurisprudence it is difficult to ascertain whether the collection of discriminatory and oppressive laws, regulations, orders, rules and practices would themselves amount to an "inhumane act". Certainly, these measures would be criminalized under the Apartheid Convention, which prohibits "legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group".[3216] In any event, the Mission finds that the underlying acts set out in this report (murder, extermination, rape, torture, enslavement and others) may be considered as having been committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over another, indicating the commission of the crime of apartheid.

1507. As for the requirement that the perpetrators committed the inhumane act with the specific intent of maintaining the institutionalized regime, again the Mission is not in a position to make a finding as to the intention (*mens rea*) of particular perpetrators, their superiors or those who ordered (or otherwise aided and abetted) their crimes. What is apparent, however, is that the crimes committed against the Rohingya served to maintain the oppressive regime in place and were, in fact, a central component of it. At a minimum, it appears that those who designed and implemented the discriminatory policies and practices were aware of their manifest impact on the welfare and quality of life of the Rohingya. In this context, a finding that the perpetrators who went on to imprison, rape and kill on a mass scale were intending to maintain the institutionalized regime is not a significant leap.

(b) Contextual elements of crimes against humanity

1508. There is no doubt that the 2016 and 2017 "clearance operations" in Rakhine State each constituted an attack on the Rohingya population, for the purposes of the contextual elements of crimes against humanity. The Tatmadaw, together with other security forces and groups of civilians, engaged in a "course of conduct involving the multiple commission of acts" listed in the definition of crimes against humanity. In both 2016 and 2017, the crimes were not a mere aggregate of random acts but were part of the same flow of events.[3217] In both 2016 and 2017 these attacks were widespread in terms of their geographical reach and the large numbers of targeted persons and victims. They were also organized and implemented in a manner as to rule out the probability of their random occurrence, and thus they were systematic. As noted above, the Mission verified, through multiple interviews and other information, "clearance operations" in 54 separate locations, and it received first-hand accounts of additional "clearance operations" in a further 22 locations, across the three townships of northern Rakhine State. There is no doubt that the attack was widespread and systematic. Although the *modus operandi* differed slightly between 2016 and 2017 (the use of helicopter gunships distinguishing the 2016 attacks, for example), the big picture was the same. Horrifying in scope and scale, these operations provided a context that elevates the crimes committed from "ordinary" crimes to those which concern the international community as a whole.

[3214] Christine Byron, *War Crimes and Crimes against Humanity in the Rome Statute of the International Criminal Court* (Manchester University Press, Manchester, 2009), p. 242.

[3215] ICC Elements of Crimes, art. 7(1)(j), para. 2, fn. 29.

[3216] Apartheid Convention, art. II.

1509. An "attack", for the purposes of the definition of crimes against humanity, can be a campaign of mistreatment carried out against a civilian population that can precede, outlast or run parallel to an armed conflict.[3218] The Mission considers that the relevant context is not limited to the days and weeks of the Tatmadaw's "clearance operations". Rather, the "attack" also encompassed the regime of State-sanctioned discrimination and oppression, that gradually eroded the human dignity of this group of civilians within Myanmar's borders. At least since their expansion following the 2016 violence, these measures amounted to a campaign of mistreatment constituting an attack on the Rohingya population. As such, the Mission considers that all underlying acts committed since the 2016 violence should fall within crimes against humanity. Considered together, the system of institutionalized oppression and the 2016 and 2017 violence perpetrated by the Tatmadaw leave little room for any other inference than the attack being committed "pursuant to or in furtherance of a State or organizational policy" as required by the definition.

1510. As noted above, the Mission considers that acts of forced labour against the ethnic Rakhine have also reached the threshold of enslavement as an underlying act of crimes against humanity. The question then is whether the contextual elements that would elevate such acts to crimes against humanity are present too. It may be possible to make the argument that much of the forced labour inflicted on the ethnic Rakhine forms part of a widespread and systematic attack directed against the civilian population in Rakhine State, regardless of their ethnicity. This warrants further investigation.

3. Conclusion

1511. The Mission finds that crimes against humanity have been committed in Kachin, Rakhine and Shan States, principally by the Tatmadaw. For Kachin and Shan States, these include crimes against humanity of murder; imprisonment; enforced disappearance; torture; rape, sexual slavery and other forms of sexual violence; persecution; and enslavement. In Rakhine State, these and additional crimes against humanity were committed. The elements of extermination and deportation are also present, and the systematic oppression and discrimination not only supports a finding of persecution, but may also amount to the crime of apartheid.

C. War crimes

1512. War crimes are serious violations of international humanitarian law that give rise to individual criminal responsibility. To amount to war crimes, the offences in question must have a link to an armed conflict.[3219]

1513. The Mission considers that non-international armed conflicts existed in Kachin and Shan States (for the entire period under review) and in Rakhine State since August 2017.

[3217] ICC, *Prosecutor v. Gbagbo*, ICC-02/11-01/11-656-Red, Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, para. 209.

[3218] ICTY, *Prosecutor v. Blagojevic and Jokic*, IT-02-60-T, Judgment, 17 January 2005, para. 543.

[3219] ICTY, *Prosecutor v. Tadic*, IT-94-1-T, Judgment, 7 May 1997, para. 573.

As such, much of the conduct that gives rise to crimes against humanity on the part of the Tatmadaw and other security forces will also satisfy the war crime elements of murder;[3220] torture;[3221] cruel treatment;[3222] outrages upon personal dignity;[3223] attacking civilians;[3224] displacing civilians;[3225] pillaging;[3226] attacking protected objects;[3227] taking hostages;[3228] sentencing or execution without due process;[3229] as well as rape, sexual slavery and sexual violence.[3230] Certain acts committed by "ethnic armed organizations" and ARSA may also constitute war crimes.

1514. In Kachin and northern Shan States, the Tatmadaw intentionally, frequently and systematically directed attacks against the civilian population or individual civilians. Tatmadaw soldiers regularly attacked villages in Kachin and Shan States for no other apparent reason than that the residents belong to the same ethnic group as an adversary. Indiscriminate attacks, not directed against a specific military objective, or which employ a means or method of combat that cannot be so directed, have killed and wounded many. Even where information indicates that a Tatmadaw attack may have been in pursuit of a specific military objective, it often still failed to respect the principle of precaution, particularly when operating in densely populated civilian areas. The Mission has concluded on reasonable grounds that these acts are serious violations of international humanitarian law amounting to war crimes, giving rise to individual criminal liability on the part of the perpetrators, culpable superiors and others who ordered, planned, instigated or otherwise aided and abetted the violations.

1515. Ethnic armed organizations are also exposed. The Mission has obtained a limited, but reliable, body of information suggesting that several ethnic armed organizations fighting in Kachin and Shan States have, to varying degrees, committed human rights abuses and violations of international humanitarian law. Information suggests, for example, that in several instances ethnic armed organizations have failed to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. Of particular concern to the Mission is the apparent pattern of ethnic armed organizations forcibly recruiting both adults and children into combat roles. Instances of destruction and appropriation of civilian property, arbitrary deprivation of liberty, torture, ill-treatment and other alleged abuses have been examined in the report. Some of these acts, where they were committed in connection to the non-international armed conflicts, may give rise to individual criminal liability for war crimes. This warrants further investigation.

[3220] ICC Elements of Crimes, art. 8(2)(c)(i)-1; ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3343, Judgment pursuant to Article 74 of the Statute, 21 March 2016, paras. 91-94.

[3221] ICC Elements of Crimes, art. 8(2)(c)(i)-4 ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, paras. 195, 289-295.

[3222] ICC Elements of Crimes, art. 8(2)(c)(i)-3, para. 1; ICTY, *Prosecutor v. Mucic et al*, IT-96-21-T, Judgment, 16 November 1998, para. 552.

[3223] ICC Elements of Crimes, art. 8(2)(c)(ii).

[3224] ICC Elements of Crimes, art. 8(2)(e)(i), para. 2; ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Judgment, 20 April 2015, paras. 800-801.

[3225] ICC Elements of Crimes, art. 8(2)(e)(viii), para. 2; ICTY, *Prosecutor v. Gotovina*, IT-06-90-T, Judgment, 15 April 2011, paras. 1738-1740.

[3226] ICC Elements of Crimes, art. 8(2)(e)(v), paras. 1-3; ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor against Jean-Pierre Bemba Gombo, 15 June 2009, para. 317; ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Judgment pursuant to article 74 of the Statute, 7 March 2015, para. 909.

[3227] ICC, Statute, art. 8(2)(e)(iv); ICC, *Prosecutor v. Al-Mahdi*, ICC-01/12-01/15-171, Judgment, 27 September 2016, at para. 15.

[3228] ICC, Elements of Crimes, art. 8 (2)(c)(iii); ICTY, *Prosecutor v. Blaskic*, IT-95-14-A, Judgment, 29 July 2004, paras. 638-639.

[3229] ICC Elements of Crimes, art. 8 (2)(c)(iv).

[3230] ICC Elements of Crimes, art. 8(2)(e)(vi)-1; ICC Elements of Crimes art. 8(2)(e)(vi)-2; art. 8(2)(e)(vi)-6; ICC *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1707 Second Decision on the Defence's Challenge to the Jurisdiction of the Court in respect to Counts 6 and 9, 4 January 2017, para. 52.

1516. In Rakhine State, during the "clearance operations" of 2017, Tatmadaw soldiers were utterly unconstrained by the laws of war. The principles of distinction, proportionality and precautions were wholly ignored. The civilian population itself, the very beneficiary of international humanitarian law protection, was put directly in the firing line and mercilessly attacked. The Mission has concluded on reasonable grounds that the attacks on protected people and property, destruction of villages, pillaging of objects, and the widespread use of rape and sexual violence in this context constitute serious violations of international humanitarian law amounting to war crimes.

1517. In addition to crimes committed by the Tatmadaw, ARSA has also been accused by both the Government, and credible third parties, of committing abuses in Rakhine State both against members of the Rohingya population and against other ethnic groups. As noted in this report, the Mission has not had comparable access to victims of these alleged abuses and so further investigation is warranted. Many alleged ARSA crimes, such as the murders of suspected informers, pre-date August 2017, the date from which the Mission considered a non-international armed conflict to exist. Those actions would constitute crimes but not war crimes. Some allegations, however, relate to the relevant period of armed conflict and appear to be linked to it. This includes the burning of the Rakhine village of Ah Htet Pyu Ma, which may as such constitute a war crime and give rise to individual criminal responsibility. As noted above, it has been alleged that ARSA is responsible for the killing of up to 100 Hindu men and women from Kha Maung Seik village tract. The Mission was able to confirm the killing, but its information on the perpetrator is inconclusive. The Mission recommends further investigation, and prosecution, of those responsible for these killings – which may amount to a war crime.

IX. Responsibility

1518. The human rights violations and abuses, as well as crimes under international law, outlined in this report give rise both to State responsibility and to individual criminal responsibility.

1519. A State is responsible for all acts that are attributable to it and constitute a breach of an international obligation.[3231] There is no question that the acts and conduct outlined in this report are in breach of Myanmar's international obligations under international treaty and customary law. As for the second criterion, under international customary law, acts are attributable to the State when they are committed by a State organ or persons or entities exercising elements of governmental authority.[3232] In the case of conduct of non-State individuals or groups, the State still incurs responsibility where these persons or groups act on the instruction of or under the direction or control of the State, or when State agents acknowledge and adopt the conduct of non-State groups.[3233] The State is also responsible when it fails to take all reasonable, necessary measures to prevent the non-State actor committing the acts and to protect its population from the conduct of non-State actors.

1520. Additionally, the violations and abuses outlined in this report will undoubtedly give rise to individual criminal responsibility, either under domestic criminal law or international criminal law. As stated in the Nuremberg judgment, "crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced".[3234]

[3231] See article 2 of the International Law Commission Articles on State Responsibility (General Assembly resolution 56/83), hereinafter "ILC Articles".

[3232] See ILC Articles, arts. 4 and 5.

[3233] See ILC Articles, arts. 8 and 11.

[3234] International Military Tribunal, *France and others v. Göring and others*, Judgment and Sentence, (1946) 22 IMT 2013, (1947).

A. Tatmadaw and other security forces

1521. In the period under review, the Tatmadaw was the main perpetrator of serious human rights violations and crimes under international law in Kachin, Rakhine and Shan States. Additionally, in Rakhine State, the Myanmar Police Force, NaSaKa and Border Guard Police were also perpetrators. Militias and militant "civilian" groups participated or assisted in the commission of some violations and crimes.

1. Tatmadaw and its command structure

1522. According to the Myanmar Constitution, the Tatmadaw is the "main armed force for the Defence of the Union", with complete autonomy in all matters related to defence, security and its internal running. The Constitution also stipulates that "all the armed forces in the Union shall be under the command of the [Tatmadaw]".[3235] The Tatmadaw consists of three branches: Army, Navy and Air Force. Senior-General Min Aung Hlaing has been its Commander-in-Chief since 2011, the entire period under review. He is the Supreme Commander of all armed forces in Myanmar.[3236] He can order all units of the Tatmadaw into combat and oversees the deployment and subordination of auxiliary forces (including the Myanmar Police Force, Border Guard Police, and militias) to combat units as necessary.

1523. The Commander-in-Chief commands all subordinate units through the General Staff, at times referred to as the War Office. Overall military strategy and policy is decided within the General Staff. All subsequent orders are based on this overall strategy. Each branch of the Tatmadaw has its own structure. The Army, for example, has its own Commander-in-Chief ("Commander-in-Chief Army", currently Vice Senior-General Soe Win, who is also concurrently the Deputy Commander-in-Chief of the Tatmadaw) and an Army General Staff. The Army General Staff has various subordinate departments, including the Directorate of People's Militia and Border Forces (the entity responsible for the organization and training of people's militias).

1524. The Army is comprised of six Bureaus of Special Operations (BSO), which are considered the first level of operational-level command. Each BSO is responsible for a particular geographic region. Each geographic region is then divided among Regional Military Commands (RMCs). For example, BSO-3 is comprised of three RMCs, the Western Regional Command, Southern Regional Command, and the South-western Military Command. Each Regional Military Command will have between one and three "Combat Divisions" subordinated to it, usually called Military Operational Commands (MOCs), which are comprised of as many as ten infantry battalions. For example, the Western Regional Command, responsible for Rakhine State, had MOC-5, MOC-9 and MOC-15 under its command as well as other infantry battalions. It may also have auxiliary forces subordinated to it for specific operations.

1525. Light Infantry Divisions (LIDs) are not permanently deployed to a geographical area but are directly subordinated to the Commander-in-Chief Army as "mobile" units deployable according to need. As such, their deployment is ordered at minimum from the Commander-in-Chief Army within the chain of command, likely with knowledge of the Commander-in-Chief. As already noted, the Commander-in-Chief Army is also Deputy Commander-in-Chief of the whole Tatmadaw. The LIDs, along with air and artillery units, are strategic-level assets that would normally only be deployed with the authorization of the Commander-in-Chief.[3237] The LIDs are also considered the most battle-hardened and experienced units within the Tatmadaw. They are often deployed as the main strike force of an operation, and directed for use in counter-insurgency operations against non-State armed groups. Once deployed, LIDs fall under daily operational command of the relevant

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[3235] Constitution of Myanmar, s. 337-338.

[3236] Constitution of Myanmar, s. 20(c).

[3237] XM-009, XM-010, XM-011, XM-012, XM-013.

Regional Military Command. However, any subsequent re-deployment, such as back to their base or to another front, will be ordered by the Commander-in-Chief Army.[3238]

1526. The information collected by the Mission indicates that the Tatmadaw is a functioning, organized military force, with an identifiable chain of command, operating under the principle of "unity of command". All levels of leadership are able to assert effective control over their subordinate units, orders are issued and obeyed, and strict reporting requirements are adhered to.[3239] The Tatmadaw's operational sophistication is demonstrated by its ability to carry our joint operations on a large scale across broad geographical areas.[3240] This indicates not only that it has the relevant structures in place (intelligence, logistics, communications, and so on), but that it has an effective chain of operational command, led by the General Staff, that can relay and receive information in real-time and effectively direct the activities of its forces.[3241]

1527. The Tatmadaw is a tightly controlled armed force, meaning that subordinate units will generally operate only pursuant to direct orders, deviation from which is unlikely given the risk of immediate sanction.[3242] There are reports that the Tatmadaw has, at times, suffered from low recruitment, low morale, poor training, high desertion and other factors that can affect its effectiveness and efficiency.[3243] However, these obstacles have not affected the existence of a very strong and centralised command structure.[3244] The Mission is satisfied that the Tatmadaw is a functioning and organized national army, with the ability to direct, order, and control its subordinates and with access to information relating to its operations throughout the country.[3245]

2. Command responsibility for security forces' crimes

1528. Acts of the Tatmadaw and other State security forces of Myanmar, as well as acts of their subordinate units during security operations, are attributable to the State and incur State responsibility.

1529. When members of an armed force (or those acting within its effective control) commit crimes against civilians, both the direct perpetrator and the commander can incur criminal liability. The Mission has concluded on reasonable grounds that the Commander-in-Chief of the Tatmadaw, members of the General Staff of the Tatmadaw, senior commanders and Tatmadaw commanders on the ground during the events in question incurred criminal liability for the actions of perpetrators who committed crimes in Kachin, Rakhine and Shan States during the period under review.

1530. A commander can be held criminally liable for the crimes committed by subordinates, if he or she is (a) a military commander or person effectively acting as a military commander; (b) who has effective command and control over troops; (c) who knew (or owing to the circumstances at the time should have known) that the forces were committing or about to commit such crimes; (d) who failed to take all necessary and reasonable measures to prevent or repress the commission; and (e) the crimes occurred as a result of the commander's failures.[3246] Each of these requirements has been met in the circumstances in Myanmar.

[3238] XM-009, XM-010, XM-011, XM-013.

[3239] XM-009, XM-010, XM-011, XM-012, XM-013, K-015.

[3240] XM-010, XM-011, XM-012.

[3241] XM-009, XM-010, XM-011, XM-012, XM-013.

[3242] XM-009, XM-010, XM-012.

[3243] XM-009, XM-010.

[3244] XM-009, XM-010, XM-012.

[3245] XM-009, XM-010, XM-011, XM-012, XM-013.

[3246] ICC Statute, art. 28(a). At the ICTY and ICTR, the Prosecution was not required to establish that the crimes occurred "as a result of" the commander's failings (the causal nexus). See ICTY, *Prosecutor v. Hadzihasanovic*, IT-01-47-T, Judgment, 15 March 2006, at para. 191. The question of whether Article 28(a) of the Rome Statute includes a causal nexus remains open. See ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3636-Anx2, Separate opinion Judge Christine Van den Wyngaert and Judge Howard Morrison, 8 June 2018, para. 51. It is included in the present analysis for completeness.

(a) Military commander

1531. As outlined above, the Tatmadaw exhibits the key components of an armed force, including a command structure that controls subordinate units through orders and directives. There is no question that those within this command structure, including the Commander-in-Chief, Senior-General Min Aung Hlaing, members of the General Staff and commanders directing operations on the ground are military commanders for the purpose of assessing criminal liability.

(b) Effective control

1532. The crimes discussed in the present report were conducted by the Tatmadaw either acting alone, or together with subordinated units such as the Myanmar Police Force, Border Guard Forces and elements of militia forces. Whether a commander has "effective control" over particular subordinates is a question of fact. Factors indicating the existence of effective control include the commander's official position, the power to issue orders, to ensure compliance with orders, to promote, replace, remove or discipline any member of the forces, and the authority to send forces to certain areas and withdraw them at any given moment.[3247]

1533. There is no doubt that the troops who participated in operations in Kachin, Rakhine and Shan States in the period under review were under the effective control of their commanders and under the leadership of the Commander-in-Chief, Senior-General Min Aung Hlaing.[3248] The Commander-in-Chief led the Tatmadaw General Staff and the General Staff was responsible for formulating the objectives and limits of military operations, the role and composition of the forces involved, the rules of engagement, and the necessary logistics. The systematic, sustained and repeated nature of the operations demonstrates the existence and implementation of a high-level plan to carry out the operations in Kachin, Rakhine and Shan States. Large-scale military operations, during which the movement of multiple units are coordinated, often with air support, can only be planned, ordered and supervised at the level of the Commander-in-Chief.[3249] This is further demonstrated by the close involvement of the Commander-in-Chief in the operations, as apparent from his Facebook page, and the removal or transfer of some senior commanders following the operations in Rakhine State.[3250] In a military as tightly controlled as the Tatmadaw, lower echelon units will only operate under direct orders, and deviation from orders is unacceptable.[3251] The Tatmadaw's senior commanders could have halted the operations at any time, or could have withdrawn the units and troops involved in reported abuses. Effective control was continuous and absolute at all relevant times.

1534. Members of the Myanmar Police Force, including the Border Guard Police, who were engaged alongside Tatmadaw troops during military operations also fell within the effective control of the Tatmadaw.[3252] The Police Force is a separate organization from the Tatmadaw, with its own chain of command.[3253] However, once deployed in joint operations with the Tatmadaw, police units are subordinated to the relevant Tatmadaw unit with responsibility over the area. Operational control over the police units is then assumed by the Tatmadaw.[3254]

[3247] ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3343, Judgment, 21 March 2016, at para. 188.

[3248] XM-009, XM-010, XM-011, XM-012, XM-013.

[3249] XM-011, XM-009, XM-010, XM-012.

[3250] Htet Naing Zaw, "Myanmar Army Replaces Rakhine Commander" (The Irrawaddy, 14 November 2017); Lun Min Mang, "Tatmadaw sacks top general included in EU sanction list" (Myanmar Times, 26 June 2018).

[3251] XM-009, XM-010, XM-012.

[3252] XM-009, XM-010, XM-011.

[3253] However, many senior officers of the Police Force are former military officers. The Minister for Home Affairs, to whom the Police Force reports, is a military officer appointed by the President on the nomination of the Commander-in-Chief: Constitution of Myanmar, s. 232(b)(ii).

[3254] XM-009, XM-010.

1535. Similarly, the Border Guard Forces in northern Myanmar, being a former non-State armed group or "ethnic armed organization", are integrated and subordinate to the Tatmadaw. They are armed, supplied and trained by the Tatmadaw, and the Tatmadaw assumes control over their actions during operations.[3255] Other militias, although not integrated into the army itself, were often at least partially supplied, armed and trained by the Tatmadaw.[3256] In Rakhine State, the recurrent and organized involvement of "civilian" groups in the operations, and the consistent way in which they were equipped, tasked and executed their roles across northern Rakhine State, demonstrate orchestration and control by the Tatmadaw. There is no doubt that these groups followed the Tatmadaw's operational orders and fell under its effective control.

1536. The *modus operandi* of Tatmadaw attacks lends further support to a reasonable conclusion that its General Staff, led by the Commander-in-Chief, exercised effective control over all units and personnel participating in the military and security operations under review. A consistent pattern of conduct was adopted, demonstrating a tactical formula that is not only indicative of a significant level of pre-planning, but a level of coordination in its execution only possible when all troops are acting under the effective control of a single unified command.

(c) Knowledge of crimes

1537. Whether a commander knew (or had reason to know) of the criminal conduct of subordinates is normally assessed in the context of crimes committed by a rogue or isolated platoon or company of troops, and whether the acts of these "rotten apples" were known to operational level commanders. In the case of the Tatmadaw, not only were crimes known to the highest levels of operational command, they form a part of the Tatmadaw's overall military strategy. The "Four Cuts" strategy, discussed above, was the operational framework for a policy of clearing an area of any conceivable support from the civilian population, including the population itself. In line with such policies, Tatmadaw troops have targeted civilians, killed and raped as part of an over-arching plan. Against this backdrop, no sensible suggestion can be made that military commanders within the Tatmadaw did not know or have reason to know that their subordinates were committing crimes. It was being done everywhere, in every operation, and pursuant to a policy of their own making and implementation. Tatmadaw commanders knowingly accepted the high probability of unlawful civilian casualties and destruction of civilian property. They accepted that the commission of grave crimes as an essential ingredient in the military strategy they approved and ordered.

1538. Even in the absence of an articulated policy to attack civilians, concerns about crimes against civilians in the context of Tatmadaw military operations have been raised with the military hierarchy for decades, including by all five United Nations Special Rapporteurs on the human rights situation in Myanmar. Members of the Tatmadaw have responded to these allegations. On rare occasions, they claim that some perpetrators of a small number of infractions have been severely punished. More frequently, they issue strident denials of any criminal conduct. Regardless, no credible claim can be made that hierarchical commanders within the Tatmadaw neither knew nor had reason to know of allegations of criminal conduct by subordinates. In the case of Rakhine State, this conclusion is only strengthened by the fact that the "clearance operations" and allegations of serious human rights violations were contemporaneously reported, almost in real-time, by the international press, and known throughout the world. Ignorance was effectively impossible.

1539. Knowledge of crimes can be ascribed to the Tatmadaw hierarchy in general, and to specific individuals within it. For example, Senior-General Min Aung Hlaing appeared well-informed of real-time developments on the ground. On 19 September 2017, the Commander-in-Chief visited the Regional Operational Command in Sittwe where he was given a detailed brief on the situation and reviewed operational maps.[3257] The next day, he visited Taung Bazа, Buthidaung Township, and held meetings at the local Tatmadaw battalion headquarters where he exhibited detailed knowledge on how events on the ground transpired.[3258] It was reported that the Commander-in-Chief "gave instructions on getting timely information, close supervision by officials as there could not be any more mistakes with security affairs, cooperation in ensuring regional peace and stability, secure and firm border fencing… then instructed the continued citizenship verification process for issuing NVCs to those living in the region". This was a commander with a full picture of what was transpiring, both on his orders and on his watch. This is further demonstrated by the daily updates on the "clearance operations" on the Tatmadaw's and the Commander-in-Chief's Facebook pages, as well as the State Counsellor's Information Committee Facebook page throughout the operations.

[3255] BM-038, XM-009; J. Buchanon, *Militias in Myanmar* (The Asia Foundation, July 2016).

[3256] XM-090, XM-010.

(d) Failure to take all necessary and reasonable measures

1540. There is no check-list in international law of the measures which a commander must have taken to ensure responsible command and comply with the duty to "prevent and repress" crimes. The adequacy of a commander's measures is a fact-specific inquiry[3259] and will depend on the measures within his or her "material ability".[3260] What is clear, however, is that a commander must take measures to prevent crimes (through, for example, adequate training and instruction on the laws of war, ensuring a disciplined fighting force, distribution and popularisation of a code of conduct, and issuing standing orders aimed at ensuring that crimes are not committed during operations).[3261] Then, if allegations of crimes are made, a commander has a duty to investigate, and, where appropriate, initiate disciplinary or penal action against the troops involved.[3262] A commander who knowingly starts or takes part in a sham investigation will not comply with his duty to punish.[3263]

1541. Commander-in-Chief Min Aung Hlaing has described the discipline of troops as the "backbone of the Tatmadaw". With reference to the military code of conduct in force, he has claimed, "Our Tatmadaw is strong because it stands on the firm ground of good military discipline and obedience. Each and every serviceman must strictly follow rules and regulations, orders and instructions."[3264] Such public statements, however, cannot be reconciled with the reality of Tatmadaw actions on the ground. The Tatmadaw has a well-documented history of military operations that consistently result in allegations of war crimes and crimes against humanity. Widespread criminal conduct and attacks on civilians are not the hallmarks of a disciplined force, whose commanders have taken all necessary and reasonable measures to prevent crimes. There is no indication that the Tatmadaw troops or those fighting alongside them were acting pursuant to orders not to harm civilians, or even basic tenets of international humanitarian law. The duty to prevent or repress crimes has been consistently violated.

1542. There are no indications that any of the top Tatmadaw commanders took any substantial steps to mitigate the unlawful character of the operations and their devastating consequences on human life and dignity. Allegations of criminal conduct, which should prompt genuine investigation and appropriate sanction, result only in public denials and obstruction. Alleged perpetrators are praised and promoted. When undeniable evidence of crimes and outside pressure reaches a tipping point, superficial investigations are launched and followed by fervent public statements that "severe" punishments have been meted out. The nature of these measures only serves to reinforce to troops that they face no consequences for attacking civilians but only for being discovered and reported in the international media. While publicly lauding the discipline of its troops, the Tatmadaw's documented history of atrocities demonstrates a complete absence of responsible command, or of measures to prevent or repress crimes.

[3257] Facebook post on file with the Mission.

[3258] Facebook post on file with the Mission.

[3259] ICTY, *Prosecutor v. Blaskic*, IT-95-14-A, Judgment, 29 July 2004, at paras. 72, 417.

[3260] ICTY, *Prosecutor v Halilovic*, IT-01-48-A, Judgment, 16 October 2007, at para. 63, fn. 163

[3261] ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3343, Judgment, 21 March 2016, at paras. 203-204;

[3262] See, for example, ICTY, *Prosecutor v. Blaskic*, IT-95-14-A, Judgment, 29 July 2004, at para. 93; *Prosecutor v. Hadzihasanovic and Kubura*, IT-01-47-A, Judgment, 22 April 2008, at para. 260.

[3263] E.g. ICTY, *Prosecutor v. Strugar*, IT-02-42-T, Judgment, 30 January 2005, at paras 435-436, 439.

[3264] The Irrawaddy, "Highlights of Snr-Gen Min Aung Hlaing's Armed Forces Day Speech" (28 March 2018).

(e) Causal link

1543. For a commander to incur liability for the actions of perpetrator subordinates, the crimes must be "as a result of" his failures to prevent and punish crimes. In the present case, there is a clear causal link between the historic failure of the Tatmadaw hierarchy to prevent and punish abuses, and the crimes committed during the operations in question. The widespread failure to punish crimes, firstly, creates a culture of impunity in which civilian casualties and brutality are inevitable components of military operations. Violence against civilians becomes normalised, and perpetrators act in the knowledge that there will be no repercussions for their conduct. Inconsistent messages (public assertions of severe sentences but almost complete impunity for crimes) reinforce the permissive culture. Subordinate commanders and troops are made aware that their crimes will be tolerated and justified. Together, these failings create a command climate that at best accepts and excuses criminal behaviour, and at worst encourages it.

1544. A concrete example of how the dereliction of the duty to prevent and punish can act as a causal nexus to crimes involves the Light Infantry Divisions in Rakhine State. The 33rd and 99th Light Infantry Divisions have been accused of committing crimes against civilians in Kachin and Shan States prior to August 2017. Rather than initiating credible and genuine investigations into these allegations, Senior-General Min Aung Hlaing escalated the situation in Rakhine State by deploying the 33rd and 99th Light Infantry Divisions into this zone earlier in August 2017, before the ARSA attacks of 25 August. It should come as no surprise that some of the most egregious violations during the "clearance operations" were committed by these troops.

1545. Further contributing to this command climate is the Tatmadaw leadership's praise and promotion of commanders and soldiers who were known to have been involved in crimes or were suspected of involvement. Senior-General Min Aung Hlaing, for example, hailed the Tatmadaw's handling of the crisis in Rakhine State. An official statement noted that "security forces took actions in accordance with the law, and did not overstep the law", and that his men "strictly followed orders and acted in accordance with the rules of engagement during the recent Rakhine crisis".[3265] When military operations that encompass widespread attacks on civilians are celebrated as an example of soldiers acting in accordance with the law, and when those who direct them are praised and promoted, the scene is set for cycles of violence. That is what has happened in Myanmar throughout the period under review.

B. Civilian authorities

1546. The constitutional powers of the civilian authorities afford little scope for controlling the actions of the Tatmadaw. Nor is there any indication that they directly participated in planning or implementing security operations or were part of the command structure, either in relation to operations in Rakhine State or in northern Myanmar. As outlined above, security matters fall entirely within the purview of the Tatmadaw without civilian oversight. The Commander-in-Chief, Senior-General Min Aung Hlaing, is the Supreme Commander of all armed forces in Myanmar, which deviates from most modern constitutional frameworks where the Head of State is usually the Supreme Commander to whom the highest ranking military officers and institutions are subordinated. The key Ministers of Defence, Home Affairs and Border Affairs are appointed by the Tatmadaw. Through these appointments, the Commander-in-Chief also controls the majority of votes in the National Defence and Security Council.

[3265] Facebook post on file with the Mission.

1547. The Commander-in-Chief recently asserted, in the context of the United Nations Security Council visit to Myanmar, that, "though I am the head of the Tatmadaw, our country has the President. And we Tatmadaw take actions under the leadership of the President" and "Our Tatmadaw is under the guidance of the Myanmar government. We only take action according to the mandate given by the law and we are not authorized to do anything beyond the boundaries of law."[3266] Nonetheless, the Mission has found no indication that the Tatmadaw has operated under orders from outside its own chain of command, specifically the Commander-in-Chief and his subordinates.

1548. Nevertheless, nothing indicates that civilian authorities at Union and State level used their limited powers to influence the situation on the ground in the country, in Rakhine State in particular, where the gravest crimes under international law were being perpetrated. The State Counsellor, Daw Aung San Suu Kyi, has not used her *de facto* position as Head of Government, nor her moral authority, to stem or prevent the unfolding events, or seek alternative avenues to meet the Government's responsibility to protect the civilian population or even to reveal and condemn what was happening. On the contrary, the civilian authorities have spread false and hateful narratives; denied the Tatmadaw's wrongdoing; blocked independent investigations, including of the Fact-Finding Mission; and overseen the bulldozing of burned Rohingya villages and the destruction of crime sites and evidence. Ignorance on the part of the Myanmar civilian authorities was effectively impossible. The allegations of widespread human rights violations were widely covered in the media during the "clearance operations" in Rakhine State, and the military and civilian authorities were themselves providing live updates on developments, including on Facebook.

1549. As such, through their acts and omissions, the civilian authorities have tacitly accepted and approved the Tatmadaw's brutal, criminal and grossly disproportionate actions. Moreover, in the period under review, the civilian authorities supported and publicly defended the severe, systemic and institutionalised oppression of the Rohingya; they have condoned, mirrored and promoted the false, hateful and divisive narratives espoused by ultranationalist Buddhist groups; through silencing activists and critical voices, they have fostered a climate in which hate speech thrives and incitement to discrimination and violence is facilitated; through their obstinate denials of credible allegations of human rights violations and abuses, they emboldened perpetrators. Such conduct is not only in violation of Myanmar's obligations under international human rights law; it has also been profoundly damaging to the country and its democratic transition. Silence in the face of unfolding atrocity crimes amounts to a severe dereliction of duty.

1550. Through these acts and omissions, the civilian authorities have contributed to the commission of atrocity crimes. For such conduct to incur individual criminal responsibility, as a form of aiding and abetting the commission of crimes[3267], it would have to be proven, first, that the practical assistance, encouragement or support to the commission of crimes had a substantial effect on the perpetration of the crime, and, second, that the practical assistance, encouragement or support was provided with knowledge that the acts or omissions assist the principal perpetrator.[3268] The information presently available to the Mission does not allow such conclusion on reasonable grounds. The Mission notes, however, that, in other contexts, liability for aiding and abetting has arisen when civilian authorities assisted in the commission of crimes through, *inter alia*, demanding disarmament of adversaries,[3269] through providing encouragement and moral support to the perpetrators[3270] (which need not be explicit),[3271] and through failing to meet a legal duty to ensure the tranquillity, public order, and security of people, amid violent attacks on refugees.[3272] On the basis of these past findings by international criminal tribunals, the Mission considers that further investigation is warranted.

[3266] https://www.facebook.com/seniorgeneralminaunghlaing/posts/1963383073696171 (on file with the Mission).

[3267] See ICTY Statute, Article 7(1), ICTR Statute, Article 6(1). See also, ICC Statute, Article 25(3)(c), which provides that "a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:… (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission". Under Article 25(3)(c), the assistance "must have furthered, advanced, or facilitated the commission of such offence". See ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-1989-Red, Judgment, 19 October 2016, para. 94.

[3268] See, for example, ICTY, *Prosecutor v. Popovic et al.*, IT-05-88-A, Judgment, 20 January 2015, at para. 1732; ICTR, *Prosecutor v. Nyiramasuhuko et* al., IT-98-42-A, Judgment, 14 December 2015, at para. 2083.

C. Non-State armed groups and individuals

1551. Non-State armed groups in Kachin, Rakhine and Shan States have committed human rights abuses and crimes against civilians, in some cases amounting to war crimes. Fighters within these non-State armed groups who participated in crimes will incur criminal responsibility. The doctrine of command responsibility also extends to non-State armed groups. As such, where commanders exercising effective control over troops have failed to take necessary and reasonable measures to prevent and punish crimes about which they had knowledge (or should have had knowledge), individual criminal responsibility for the acts of these troops may attach.

1552. Local authorities, politicians and monks participated or assisted in the commission of violations and crimes, to varying degrees. To this end, the Mission recalls for example the apparent link between virulent anti-Rohingya and anti-Muslim hate speech, rhetoric and propaganda, and outbreaks of violence. Those whose acts or omissions had a substantial effect on the commission of crimes, can be liable for aiding and abetting in their commission. This contribution need not have been physical, liability can also arise for individuals who provide moral support, or who fail to act in the face of a clear legal duty. The degree of individual culpability of these local authorities, politicians, and monks, warrants further examination.

D. Non-exhaustive list of alleged perpetrators

1553. The Mission has drawn up a non-exhaustive list of persons it considers warrant individual investigation and prosecution as possible perpetrators of crimes under international law, indicating priority subjects. It includes all persons concerning whom the Mission has received information indicating their involvement in the serious human rights violations and abuses, as well as possible crimes under international law, outlined in this report. The list includes individuals belonging to the Tatmadaw and other security forces in Myanmar, non-State armed actors and certain civilian individuals. While the list includes names of alleged direct perpetrators, it focuses on those exercising effective control over them.

1554. The majority of violations and crimes found by the Mission were committed by the Tatmadaw or by forces under its control. Considering the analysis on command and control within that institution, making it clear that the Tatmadaw commanders exercise effective control over their own soldiers, as well as over other armed actors deployed in military operations, the Mission decided to publicly release the names of six senior commanders within the Tatmadaw. While the top commanders have responsibility over the entire country, including Kachin and Shan State, others are specifically in relation to the "clearance operations" in Rakhine State (as per the pictured chart). In naming the highest levels of command, the Mission seeks to underscore their responsibility for crimes committed. Responsibility starts at the top.

[3269] ICTY, *Prosecutor v. Brdjanin*, IT-00-36-T, Judgment, 1 September 2004, at para. 367.

[3270] SCSL, *Prosecutor v. Taylor*, SCSL-03-01-A, Judgment, 26 September 2013, at paras. 523-524.

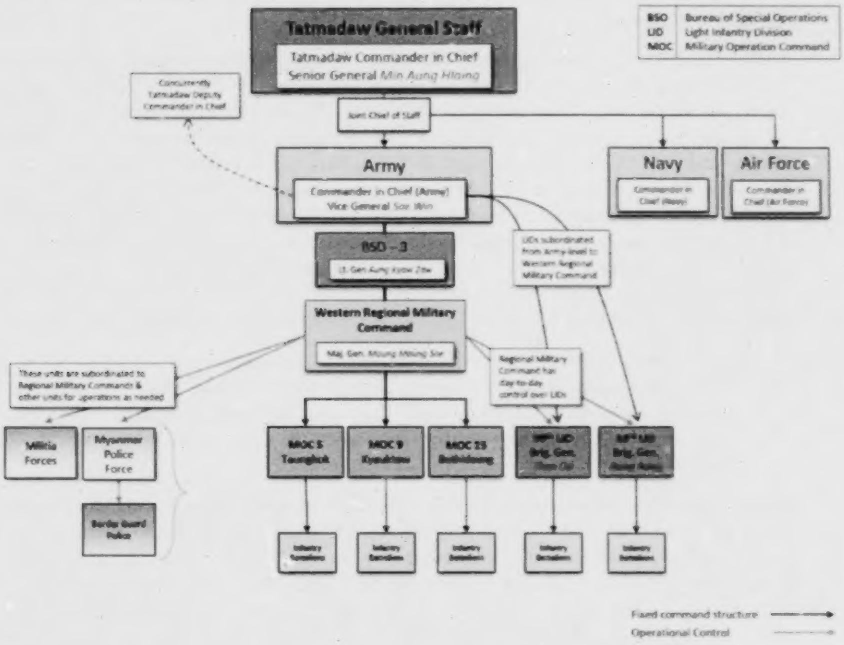
[3271] ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-1989-Red, Judgment, 19 October 2016, at para. 94.

[3272] ICTR, *Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42-A, Judgment, 14 December 2015, at paras. 2189-2222.

1555. The list includes:

- Tatmadaw Commander-in-Chief, Senior-General Min Aung Hlaing;
- Deputy Commander-in-Chief, Vice Senior-General Soe Win;
- Commander, Bureau of Special Operations-3, Lieutenant-General Aung Kyaw Zaw;
- Commander, Western Regional Military Command, Major-General Maung Maung Soe;
- Commander, 33rd Light Infantry Division, Brigadier-General Aung Aung;
- Commander, 99th Light Infantry Division, Brigadier-General Than Oo.

Chart providing an overview of the Tatmadaw chain of command during the "clearance operations" as of 25 August 2017


Tatmadaw General Staff
Tatmadaw Commander in Chief
Senior General Min Aung Hlaing
BSO Bureau of Special Operations
LID Light Infantry Division
MOC Military Operation Command
Concurrently Tatmadaw Deputy Commander in Chief
Joint Chief of Staff
Army
Commander in Chief (Army)
Vice General Soe Win
Navy
Commander in Chief (Navy)
Air Force
Commander in Chief (Air Force)
BSO – 3
Lt. Gen. Aung Kyaw Zaw
LIDs subordinated from Army-level to Western Regional Military Command
Western Regional Military Command
Maj. Gen. Maung Maung Soe
These units are subordinated to Regional Military Commands & other units for operations as needed
Regional Military Command has day-to-day control over LIDs
Militia Forces
Myanmar Police Force
Border Guard Police
MOC 5 Taunggup
MOC 9 Kyauktaw
MOC 15 Buthidaung
99th LID Brig. Gen. Than Oo
33rd LID Brig. Gen. Aung Aung
Infantry Battalions
Infantry Battalions
Infantry Battalions
Infantry Battalions
Infantry Battalions
Fixed command structure
Operational Control

1556. The full list will form part of the Mission's archives, kept in the custody of the United Nations High Commissioner for Human Rights. It can be shared with any competent and credible body pursuing accountability in line with recognized international norms and standards, including with regard to fair trial.

E. International community

1557. Considering the nature and scale of the gross human rights violations and abuses committed in Myanmar since 2011, amounting to the gravest crimes under international law, the question arises whether the international community has met its responsibility to protect civilian populations from the commission of atrocity crimes, including possibly genocide. The international community, through the United Nations, has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means and, through the

Security Council, other collective measures to help to protect populations from atrocity crimes.[3273]

1558. The role of the United Nations and humanitarian community in relation to the issues set out in this report has not been specifically investigated by the Mission. At the same time, the Mission is concerned that these events, particularly in Rakhine State, occurred with a large active international presence on the ground and – significantly – while the United Nations was rolling out its Human Rights Up Front Action Plan.[3274]

1559. Throughout the period under review, Myanmar was repeatedly identified as a situation that required the "whole of UN", human rights driven, response to crises set out in the Action Plan. This approach was rarely, if ever, pursued. Rather, it was largely "business as usual", with development goals and humanitarian access prioritised only. Information received by the Mission indicates that a number of individuals within the United Nations system in Myanmar tried to pursue the Human Rights Up Front approach. The Mission is concerned to note allegations that these individuals were ignored, criticised, side-lined or blocked in these efforts.

1560. The United Nations leadership in-country engaged on human rights issues through a "quiet diplomacy" approach to raise concerns with the Government. This included letters to the Myanmar authorities and meetings with senior officials. However, public advocacy was left to the "usual suspects", primarily the United Nations High Commissioner for Human Rights and the United Nations Special Rapporteur on the human rights situation in Myanmar. This is exemplified by the fact that, even after the events following 25 August 2017, the only statement made by the Resident Coordinator's Office was to condemn the ARSA attacks and losses suffered by the Myanmar security forces.[3275] Leaving human rights to the specialized entities rather than addressing them collectively as the United Nations system, undermined the effectiveness of the United Nations in Myanmar. One detailed study of the approach of the international community in Myanmar concluded:

> *UN leaders inside Myanmar consistently left the public advocacy role to a few externally based human rights mandate-holders, without visibly supporting or backing them up. [...] The deeply ingrained and well-practiced habit of self-censorship remained too powerful, even when the worst of violence struck in 2016 and 2017.*[3276]

1561. Even now, the approach displays few signs of any lessons having been learned. There has been no review of what happened, of where the approach taken had some positive effect and where it did not, and of how the UN's approach could be improved in future crises. A review of this kind is the very least that would be expected in any organization dealing with a catastrophe such as this. Human rights remain missing from agreements recently signed between the Government and United Nations agencies and international donors. Integration of a coherent human rights approach throughout the work of the United Nations and international community, including advocacy from the most senior levels, remains essential if the fundamental challenges outlined in this report are to be addressed. As the detailed study also highlighted:

> *The international community in Myanmar has boxed itself in to a very small space, pressured and manipulated into silent complicity with ethnic cleansing, and it remains to be seen whether the UN and its humanitarian partners will find the*

[3273] A/RES/60/1 (2005 World Summit Outcome), para. 139.

[3274] The Human Rights Up Front Action Plan was put in place in 2013, to draw appropriate lessons from a 2012 report of the Secretary-General Internal Review Panel on United Nations action in Sri Lanka, which had identified a "systemic failure" in how the United Nations had dealt with the crisis in Sri Lanka. The principal aim of this Action Plan was to strengthen "the UN system's ability to effectively prevent and respond to serious human rights violations and complex crises" and to provide a framework for a timelier and more predictable UN-wide response to such situations.

[3275] Statement of the Resident Coordinator of the United Nations in Myanmar Renata Lok-Dessallien on attacks in Rakhine State (25 August 2017).

[3276] L. Mahoney (Fieldview Solutions), "Time to break old habits: Shifting from Complicity to Protecting the Rohingya" (July 2018).

> *courage and creativity to try to push that space open. In situations like this, international actors tend to bemoan how little political space and manoeuvrability they believe they have, and paradoxically use this as an excuse for not trying to expand it. But political space is often self-constrained: the Myanmar government has learned that it can count on UN and humanitarian self-censorship.*[3277]

1562. The Mission is extremely grateful to United Nations entities and individuals who provided valuable assistance and information to it in its work. However, it also regrets the lack of cooperation from others. The Mission is concerned that a number of interlocutors within the United Nations system took a defensive attitude towards its work and appeared to view it as a threat, rather than a means to address the most deep rooted human rights challenges facing Myanmar. This attitude and approach must change.

X. Impunity and accountability

> *I do not see any justice for us. Justice was never there in Myanmar. It is just that now the situation is more in focus because of the extreme levels of the violence.*[3278]

1563. In 2012, United Nations Member States explicitly agreed to end impunity for genocide, war crimes and crimes against humanity, violations of international humanitarian law and gross violations of human rights law. They committed to the proper investigation and appropriate sanction of violations, including by bringing the perpetrators of crimes to justice through national mechanisms or, where appropriate, regional or international mechanisms, in accordance with international law.[3279] The United Nations Security Council has also emphasized the responsibility of States to comply with their obligations to end impunity and thoroughly investigate and prosecute "in order to prevent violations, avoid their recurrence and seek sustainable peace, justice, truth and reconciliation".[3280]

1564. Myanmar has a legal obligation to ensure accountability for the violations and crimes outlined in this report. To date, no significant steps have been taken. At the Human Rights Council session in February 2018, the representative of Myanmar stated that his government would not condone impunity and that action would be taken against perpetrators "where there is concrete evidence".[3281] The Mission welcomes this statement of principle but highlights its insufficiency. The statement illustrates a misunderstanding of Myanmar's legal obligations. Its duty is not linked to the presentation of "concrete evidence" by others. It is to ensure that all allegations of human rights violations and abuses are promptly, thoroughly, independently and impartially investigated – and that concrete evidence is gathered, rather than lost or destroyed. It must act, not take a passive stance.

1565. Ensuring accountability for crimes is not only a legal obligation. In Myanmar, it is also the key to disrupting patterns of oppression and cycles of violence in which the country has remained trapped for half a century. Impunity for gross human rights violations has significantly and demonstrably contributed to the validation of deeply oppressive and discriminatory conduct, enabled recurrence of human rights violations and atrocity crimes, and emboldened perpetrators and silenced victims. It has undermined the legitimacy of the State and exacerbated ethnic and racial divisions. It has prevented Myanmar's development as a modern democratic State. Accountability is the key to re-establishing the population's trust in the State and in its capacity to ensure a secure and equitable society in which all people can prosper. As stated in the preamble of the United Nations Principles to Combat Impunity, "there can be no just and lasting reconciliation unless the need for justice is effectively satisfied".[3282] The transformation of South Africa after apartheid and of South American States after the end of military dictatorships and civil wars stand as concrete examples of this principle.

[3277] Ibid.

[3278] DI-048.

[3279] A/RES/67/1, Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels.

[3280] E.g. S/PRST/2010/11 (Statement by the President of the Security Council, Promotion and strengthening of the rule of law in the maintenance of international peace and security 29 June 2010).

[3281] H.E. Mr. Kyaw Tin, "Statement at the High-Level Segment - 4th Meeting, 37th Regular Session of the Human Rights Council" (27 February 2018).

A. Legal framework and international standards on accountability

1566. Impunity means the impossibility, *de jure* or *de facto*, to bring perpetrators of violations to account, whether in criminal, civil, administrative or disciplinary proceedings. Perpetrators are shielded from any inquiry that might lead to their being accused, arrested, tried and - if found guilty - sentenced to appropriate penalties and required to provide reparations to victims.[3283] The Mission adheres to a broad understanding of the concept of accountability. As highlighted by the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, "criminal justice alone would not be enough to satisfy the justice claims of victims of massive or systematic human rights abuse".[3284] In addition, accountability also encompasses measures to realize the right to know the truth, the right to an effective remedy and to reparation, and guarantees of non-recurrence.[3285]

1567. This broad understanding of accountability stems from States' obligations under international law. States have a duty to ensure that individuals have accessible and effective remedies to enforce their rights, including through redress for violations.[3286] This includes a duty to investigate, prosecute and punish gross human rights violations and serious violations of international humanitarian law, in particular where they amount to crimes under international law.[3287] For example, under the Convention on the Elimination of Discrimination against Women, States parties like Myanmar have a due diligence obligation to prevent, investigate, prosecute and punish acts of gender based violence. A failure to investigate and prosecute could, in itself, constitute a human rights violation.[3288] Investigations into allegations of violations and crimes must be prompt, thorough and effective, independent and impartial, and transparent.[3289] International and domestic courts have recognised this obligation on governments to prevent, investigate and, if necessary, prosecute.[3290]

[3282] Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102/Add.1), hereafter "Principles to Combat Impunity".

[3283] Principles to Combat Impunity, definitions.

[3284] A/HRC/36/50/Add.1, para. 25.

[3285] Principles to Combat Impunity, principle 1.

[3286] B. Ramcharan, "The Law-Making Process: From Declaration to Treaty to Custom to Prevention", in *The Oxford Handbook on International Human Rights Law*, D. Shelton ed. (Oxford, Oxford University Press, 2013), p. 512. The right of victims to an effective and enforceable remedy for violations of their human rights is proclaimed in numerous international instruments, including the Universal Declaration of Human Rights (art. 8), the ASEAN Human Rights Declaration (art. 5), and several international treaties (e.g. art. 2 of the International Covenant on Civil and Political Rights; article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; art. 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; art. 39 of the Convention on the Rights of the Child; art. 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907; art. 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977; and arts. 68 and 75 of the Rome Statute of the International Criminal Court). It is also further developed in the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, hereafter "Basic Principles and Guidelines on the Right to a Remedy and Reparation".

[3287] E.g. A/HRC/27/56, para. 27. See also e.g. Genocide Convention, art. 1; U.N. Human Rights Committee, General Comment No. 31 (CCPR/C/21/Rev.1/Add.13); J.M. Henckaerts and L. Doswald-Beck, "Customary International Humanitarian Law. Volume I: Rules" (Cambridge, ICRC/Cambridge University Press, 2005), rules 150, 158 (hereinafter "ICRC/Customary IHL"); Basic Principles and Guidelines on the Right to a Remedy and Reparation (principles 1-5); and the Principles to Combat Impunity.

[3288] E.g. United Nations Human Rights Committee, General Comment No. 31 (CCPR/C/21/Rev.1/Add.13), para. 15.

1568. Considering the specific context in Myanmar, it is important to briefly recall what is meant by prompt, thorough and effective, independent and impartial, and transparent investigations, according to international standards:

- **Prompt**: the State must initiate and conduct an investigation into an alleged human rights violation as soon as possible and proceed without unreasonable delays. A reasonable allegation is sufficient to trigger an investigation; a formal complaint or concrete evidence is not required.
- **Thorough and effective**: investigations must be conducted in a manner that can lead to the identification, prosecution and punishment of those responsible for violations, including, for example, members of the military or government. In relation to unlawful deaths, this would include collecting eyewitness testimony and forensic evidence, as well as carrying out an autopsy.[3291] As well as seeking to identify individual perpetrators, the investigation should seek to identify policies and systemic failures that may have contributed to unlawful deaths and to identify patterns, where they exist.[3292] The investigation must be conducted by a mechanism that is appropriately empowered and resourced, with capacity to ensure the security of witnesses.
- **Independent and impartial**: the persons or mechanism responsible for and carrying out the investigation must be independent from those implicated in the events under investigation. This, at the very least, implies no hierarchical or institutional link between the alleged perpetrator and the investigators.[3293] Investigators must be impartial and without bias, analysing evidence objectively.
- **Transparent**: investigative processes and their outcomes must be transparent, and open to the scrutiny of the general public and of victims' families. Limitations on transparency must be strictly necessary for a legitimate purpose (e.g. protecting the privacy and safety of affected individuals, ensuring the integrity of continuing investigations, or securing sensitive information about military or police operations).[3294]

1569. In addition to establishing individual criminal responsibility, measures also need to be taken to realize the right of victims to know the truth about violations.[3295] The U.N. Principles on Combating Impunity describe the full and effective exercise of the right to the truth as "a vital safeguard against the recurrence of violations". Victims and societies have the right to know the truth about the perpetration of heinous crimes and the circumstances that led to their commission.[3296] The right to the truth appears in several international instruments;[3297] is recognized by the Human Rights Council;[3298] and is protected in international law concerning enforced disappearances.[3299] Additionally, in the event of death or disappearance, victims' families have the right to know the truth about the circumstances in which violations took place and the victims' fate.[3300] Governments are obliged to establish mechanisms to facilitate the revelation of the truth about gross human rights violations.[3301]

[3289] Ibid. Also Principles to Combat Impunity, principle 19; Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (New York and Geneva, United Nations, 2017) (hereafter "Minnesota Protocol").

[3290] Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988, Ser. C, No. 4, which held that States had an obligation, as a corollary to their obligation to ensure rights, to investigate and, if warranted, prosecute and punish violations and to provide remedies to victims. Other regional human rights bodies, as well as United Nations treaty bodies, have all reaffirmed this principle. E.g. European Court of Human Rights, *Case of Benzer and others v. Turkey*, App no. 23502/06, 24 March 2014; African Commission on Human and Peoples' Rights, *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, Communication no. 245/2002 (2006); U.N. Human Rights Committee, *Observations on Algeria*, CCPR/C/109/D/1874/2009, 7 January 2014, para. 7.10.

[3291] Minnesota Protocol, paras. 24-25.

[3292] Minnesota Protocol, para. 26.

[3293] For unlawful deaths, see Minnesota Protocol, para. 28.

[3294] Minnesota Protocol, paras. 32-33.

[3295] On the right to the truth, see E/CN.4/2006/91, A/HRC/5/7, A/HRC/12/19 and A/HRC/15/33.

1570. Remedies further include adequate, effective and prompt reparation for harm suffered.[3302] Victims are entitled to full and effective reparations, which entail restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[3303] Restitution aims to restore the victim to the situation existing before the violation. It may include restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property. Compensation should be provided for any economically assessable damage (e.g. physical or mental harm, lost opportunities, material damage). Rehabilitation includes medical and psychological care as well as legal and social services.[3304] Satisfaction may include effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth; search for the whereabouts of the disappeared; search for, identification and burial of bodies; public apology and acknowledgment of the facts and acceptance of responsibility; commemorations and tributes to victims.[3305] Reparations should be proportional to the gravity of the violation and the circumstances of each case.

1571. A critical element of the right to an effective remedy is the provision of guarantees of non-recurrence.[3306] Examples include ensuring effective civilian control of military and security forces; ensuring that all civilian and military proceedings abide by international standards of due process; strengthening the independence of the judiciary; protecting journalists and human rights defenders; providing human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; promoting public servants' observance of codes of conduct and ethical norms, in particular international standards; promoting mechanisms for preventing and monitoring social conflicts and their resolution; reviewing and reforming laws contributing to or allowing human rights violations.[3307]

1572. These legal obligations and international norms provide a roadmap for genuine and comprehensive accountability in Myanmar. That road is long, with no quick fixes. A response amounting to "show us the evidence and then we will investigate", however, is manifestly insufficient.

[3296] Principles to Combat Impunity, principle 2.

[3297] E.g. Basic Principles and Guidelines on the Right to a Remedy, principle 24; Principles to Combat Impunity, principles 2-5.

[3298] In 2005, the Commission on Human Rights adopted resolution 2005/66 on the right to truth, requesting OHCHR to prepare a study on the right to the truth (E/CN.4/2006/91). Human Rights Council resolutions 9/11, 12/12 and 21/7 also support the right to the truth. In 2014, the General Assembly adopted a resolution on the right to the truth (A/RES/68/165), recognizing "the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights".

[3299] International Convention for the Protection of All Persons from Enforced Disappearance, art. 24(2).

[3300] Principles to Combat Impunity, principle 4. This right finds its roots in international humanitarian law, see ICRC/Customary IHL, rule 117.

[3301] E.g. A/HRC/24/42, para. 20; D. Groome, "The Inalienable Right to the Truth", in *The United Nations Principles to Combat Impunity – A Commentary*, F. Haldemann, T. Unger, eds. (Oxford, Oxford University Press, 2018), pp. 59-70.

[3302] Basic Principles and Guidelines on the Right to a Remedy, principles 11, 14-15; Principles to Combat Impunity, principle 4 and 31. See also ICC, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Decision establishing the principles and procedures to be applied to reparations, 7 August 2012.

[3303] Basic Principles and Guidelines on the Right to a Remedy, principle 18.

[3304] Ibid., principle 21.

[3305] Ibid., principle 22.

[3306] Also A/HRC/30/42 for an in-depth exploration of the concept of guarantees of non-recurrence.

[3307] Basic Principles and Guidelines on the Right to a Remedy, principle 23.

B. History and climate of impunity in Myanmar

1573. Justice has remained elusive for victims in Myanmar for decades, with the authorities systematically failing to condemn, investigate and prosecute perpetrators. Thirty years of United Nations resolutions and reports, as well as those from civil society, have identified impunity as a root cause of continued human rights violations in Myanmar. The United Nations General Assembly, Commission on Human Rights and Human Rights Council have highlighted the negative impact of impunity since at least 1994, calling on Myanmar to bring perpetrators to account.[3308]

1574. All five United Nations Special Rapporteurs on the human rights situation in Myanmar have identified systemic impunity as a critical obstacle to the realization of human rights in Myanmar. In 1994, the first Special Rapporteur, Yozo Yokota, recommended that, "given the magnitude of the abuses, official condemnation should be made by the Government of all acts by authorities involving human rights violations. Such acts, including all acts of intimidation, threat or reprisal, should not benefit from the present system of complete denial by, and impunity under, the Government."[3309]

1575. Twelve years later, in a 2006 report, Special Rapporteur Paulo Sergio Pinheiro demonstrated how impunity had exacerbated a range of human rights concerns and contributed to a deterioration of the socio-economic situation of villagers in Myanmar.[3310] He found that violations were "indulged with impunity" by the regime, authorized and sanctioned by law. He identified the misuse of the legal system and a lack of judicial independence as providing a legal basis for abuse of power and exoneration of perpetrators.[3311] Another decade later, the current Special Rapporteur, Yanghee Lee, identified the impunity enjoyed by the military and other security forces, and their dominant position in the government, as the two main causes for recurrent human rights issues in the country. She noted that, where violations and abuses were alleged, the Government appeared "quick to resort to its standard position of 'defend, deny and dismiss'",[3312] the antithesis of accountability.

1576. The Myanmar authorities, both civilian and military, still adhere to this established policy of denial of mass violations and impunity for their perpetrators.

1. Key obstacles to accountability in Myanmar

1577. Beyond the question of unwillingness, impunity for human rights violations in Myanmar – especially where committed by security forces – is largely structural. It is built into the legal framework and the system of governance.

(a) Structural obstacles to criminal accountability

1578. Impunity for human rights violations is enshrined in the 2008 Constitution and other domestic laws. Article 445 of the Constitution provides that no proceedings can be instituted against military officials or government members for "any act done in the execution of their respective mandate". This blanket amnesty appears intended to shield the former military regimes, the SLORC and the SPDC, from prosecution for acts committed prior to March 2011, although the clause could be interpreted as also providing immunity for later conduct. In 2016, the outgoing government of Thein Sein also adopted the Former Presidents' Security Act, providing presidents with legal immunity from prosecution for crimes committed during their term of office.[3313]

[3308] See e.g. E/CN.4/1994/132, op. 8, reminding "the Government of Myanmar of its obligation to put an end to the impunity of perpetrators of violations of human rights, including members of the military, and its responsibility to investigate alleged cases of human rights violations committed by its agents on its territory, to bring them to justice, prosecute them and punish those found guilty, in all circumstances." For General Assembly, see e.g. A/RES/52/137, A/RES/53/162, A/RES/56/231, A/RES/59/263.

[3309] E/CN.4/1994/57, para. 74(g).

[3310] A/61/369, paras. 27-33. See also E/CN.4/1999/35, para. 78.

[3311] A/61/369, para. 34; A/62/233, para. 30.

[3312] A/HRC/34/67, para. 83. Also A/HRC/28/72, para. 57.

1579. Furthermore, article 20(b) of the Constitution gives the Tatmadaw the right to "independently administer and adjudicate all affairs of the armed forces". Articles 293(b) and 319 establish permanent military tribunals. The 1959 Defence Services Act provides that military personnel on active service who commit serious crimes against a civilian (murder, culpable homicide, rape) shall be tried by military tribunals (article 72). The Act defines "active service" in such broad manner that military personnel would effectively always fall under military courts' jurisdiction.[3314] Article 343(b) of the Constitution further makes decisions of the Commander-in-Chief concerning military justice matters "final and conclusive", with no right of appeal. This effectively means that the Commander-in-Chief can also pardon anyone convicted by a military tribunal. The Mission has been unable to ascertain whether the rare soldiers convicted of serious crimes actually serve their sentences.

1580. These legal provisions provide broad immunities and make the Tatmadaw accountable only to itself. This is incompatible with the duty of States to ensure independent and impartial investigations for alleged human rights violations. It is inconsistent with international standards requiring that human rights violations fall within the jurisdiction of ordinary domestic courts.[3315] Military courts are inappropriate venues to adjudicate human rights violations.[3316] In Myanmar in particular, military courts lack the independence and impartiality required to judge military officers for serious human rights violations. Additionally, trials in military courts are generally not open to the public; victims generally remain unaware or uninformed of any action taken against alleged perpetrators.

1581. In short, under the current constitutional and legal framework, the civilian authorities cannot hold the military or its members accountable for human rights violations. Amending the Constitution requires more than 75 per cent of the votes in Parliament. Given that the Constitution also guarantees that 25 per cent of parliamentary seats are held by the military, any amendments would require their consent.[3317]

1582. As for the police, the 1995 Myanmar Police Force Maintenance of Discipline Law also assists in shielding police officers from prosecution for crimes committed in the course of their service. The Law lists a range of "offences" for which police officers may be tried before a Police Court, such as threatening a witness (article 13(c)), unlawful detention (article 17(a)), beating or ill-treatment of prisoners (article 17(c)), or corruption (article 17(h)). As such, even for acts which may constitute serious human rights violations and crimes under the Penal Code, police officers are shielded from prosecution in the domestic criminal system. In addition to concerns over its independence and impartiality, an accused before a Police Court faces lesser sentences (e.g. "threatening a witness" is punishable by a maximum prison term of one year, whereas "criminal intimidation" under the Penal Code is punishable by a maximum prison term of seven years[3318]). The police and its administration fall under the Ministry of Home Affairs, which is ultimately answerable to the Tatmadaw Commander-in-Chief.

[3313] Former Presidents' Security Law (Pyidaungsu Hluttaw Law No. 25/2016, 28 January 2016).

[3314] The provision reads: "The time during which [the person] (1) is attached to, or forms part of, a force which is engaged in military operations against an enemy, or (2) is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or (3) is attached to or forms part of a force which is in military occupation of a foreign country".

[3315] See Principles to Combat Impunity, principle 29; United Nations Commission on Human Rights, Draft Principles Governing the Administration of Justice Through Military Tribunals (E/CN.4/2006/58).

[3316] See e.g. F. Ni Aolain, "Principle 29. Restrictions on the Jurisdiction of Military Courts", in F. Haldemann and T. Unger (eds.), *The United Nations Principles to Combat Impunity – A Commentary* (Oxford, Oxford University Press, 2018), p. 322: "When military courts are deployed in fragile, transitional, and post-conflict states there is a clear and present danger that the modality of trial may compound rather than address serious human rights violations and the deficiencies of the rule of law."

[3317] Constitution of Myanmar, s. 436.

(b) Inadequate substantive legal framework

1583. As Myanmar has ratified the Genocide Convention, it must criminalise and punish genocide in its domestic laws. This has not been done. Nor have crimes against humanity or war crimes been specifically criminalised. While other serious crimes are included in the Penal Code, the definitions do not consistently comply with international norms and standards. For instance, while torture is criminalised in the Penal Code (articles 330 and 331), the definition only extends to acts undertaken with a view to compelling the victim's response (e.g. confession), while the international definition is broader. There is no specific provision for ill-treatment. The Penal Code provisions for rape and sexual violence are restrictive.[3319]

1584. The Constitution is particularly problematic in that generally it only extends human rights protections to "citizens". In a context where the citizenship rules are fundamentally discriminatory and have rendered a large segment of the population *de facto* stateless, this effectively excludes non-citizens from seeking protection for their rights and an effective remedy for violations. Furthermore, Myanmar's legal framework includes laws, regulations and orders that oppress the Rohingya specifically, and more generally curtail freedom of expression, association and peaceful assembly.

(c) Lack of effective complaint mechanisms and avenues for justice

1585. There are no effective avenues for justice within the civilian administration. Neither the justice system nor the Myanmar National Human Rights Commission is a realistic option for pursuing accountability for gross human rights violations. Myanmar has not recognized the competence of any of the individual complaints mechanisms under the international human rights framework either.

1586. The Myanmar judiciary has been systematically undermined, weakened and neglected during the long period of military dictatorship. Despite some progress reported since 2011[3320], it is consistently assessed as lacking independence, poorly trained and resourced, inefficient, and prone to corrupt practices.[3321] These factors impact on its ability to guarantee fair trial rights.

[3318] Penal Code of Myanmar, s. 503, 506.

[3319] See CEDAW/C/MMR/CO/4-5, para. 27(a).

[3320] The Judicial Strategic Plan 2018-2022 ("Towards improving justice for all") of the Supreme Court of Myanmar lists "enhance judicial independence and administrative capacity" and "promote and ensure the professionalism, accountability and integrity of the judiciary" as key strategic action areas. Recent positive developments include the launch of the Codes of Ethics of the Union Supreme Court and the Union Attorney General's Office. A Manual of Fair Trial Standards for Law Officers (prosecutors) was also recently launched by the Union Attorney General, to raise awareness about the rights of the accused and the proper conduct of criminal proceedings.

[3321] See e.g. International Bar Association, *The Rule of Law in Myanmar: Challenges and Prospects* (London, December 2012); Kyaw Min San, "Critical Issues for the Rule of Law in Myanmar", in *Myanmar's Transition: Openings, Obstacles and Opportunities*, N. Cheesman, M. Skidmore, T. Wilson, eds. (Singapore, Institute of Southeast Asian Studies 2012), pp. 217-229; N. Cheesman, "Myanmar's Courts and the Sound Money Makes", in *Myanmar's Transition: Openings, Obstacles and Opportunities*, N. Cheesman, M. Skidmore, T. Wilson, eds. (Singapore, Institute of Southeast Asian Studies 2012), pp. 231-248; N. Cheesman, *Opposing the Rule of Law – How Myanmar's Courts Make Law and Order*, Cambridge University Press, Cambridge, 2015; Justice Base, *Monitoring in Myanmar – An Analysis of Myanmar's Compliance with Fair Trial Rights* (Yangon, 2017); International Commission of Jurists, *Achieving Justice for Gross Human Rights Violations in Myanmar – Baseline Study* (Geneva, January 2018); M. Crouch, "Judiciary", in *Routledge Handbook of Contemporary Myanmar*, A. Simpson, N. Farrelly and I. Holliday, eds. (Routledge, London and New York, 2018), pp. 248-256.

1587. The judiciary's lack of independence is generally acknowledged. The President appoints judges to the Supreme Court and the Chief Justices of the High Courts, with a very limited role for review by the Union Parliament.[3322] It suffices that the President is of the opinion that the person is "an eminent jurist"; a law degree or legal practice is not required. Most judges on the Supreme Court are military appointees and several have military backgrounds, including the current Chief Justice, Htun Htun Oo, who was appointed in 2011. These structural factors may explain the level of undue influence from State authorities, in particular the executive and the military, particularly in politically sensitive cases, including those regarding human rights violations.

1588. Other challenges include insufficient legal expertise and judicial experience. A general lack of adequate resources results in low remuneration, understaffing and limited training options. Many experts, observers and practitioners consider corruption widespread.[3323] In March 2018, at the "Conference on the Justice Sector Coordinating for Rule of Law" in Naypyidaw, State Counsellor Aung San Suu Kyi said, "the public trust in people who are working in the justice sector has eroded. It is because of corruption, exercising the law for their own interests, failing the principle of upholding justice without favour, and not performing their work efficiently and lacking expertise."[3324] This sentiment was echoed by many of the Mission's interviewees, who invariably stated that they had no trust in the Myanmar justice system.

1589. Similar problems plague the investigation of cases. The Myanmar Police Force is poorly regarded by the public, has limited institutional independence and high levels of corruption.[3325] The head of the Myanmar Police Force has a military background and the Police Force falls under the Ministry of Home Affairs, one of the military controlled ministries. During joint security operations, the police fall under the command of the Tatmadaw.[3326] Its technical capacity to undertake complex investigations, including in terms of crime scene investigations and forensic analysis in line with international standards, is also limited.[3327] There can be no expectation that the police will conduct credible, independent investigations into alleged gross human rights violations by the military or other security forces.

1590. Similarly, the Union Attorney-General is a member of the executive branch of the government. The Attorney-General plays a critical role in upholding the rule of law and respect for human rights, as his Office supervises the country's prosecutors and can select cases and initiate criminal proceedings. However, the Office of the Attorney-General enjoys low public confidence, largely due to its history of defending the interests of the military and its poor track record regarding sensitive matters such as human rights violations – including the prosecution of journalists, human rights defenders and activists on spurious grounds. Legal officers and prosecutors are generally not considered to have the independence and capacity to prosecute acts constituting human rights violations.[3328]

[3322] Constitution of Myanmar, s. 299.

[3323] See same references as for preceding paragraphs.

[3324] The Republic of the Union of Myanmar, Ministry of Information, "Rule of law for all - Judiciary, legal institutions urged to work honestly for reforms" (7 March 2018), available at: http://www.moi.gov.mm/moi:eng/?q=news/8/03/2018/id-12933 (accessed August 2018).

[3325] E.g. A. Selth, *Police reform in Burma (Myanmar): aims, obstacles and outcomes*, Regional Outlook Paper: No. 44, 2013 (Griffith Asia Institute)

[3326] For more detail, see chapter IX, A: Responsibility - Tatmadaw and other security forces.

[3327] Recent cooperation projects have focused on supporting the Myanmar Police Force in its modernisation, focusing on areas such as community policing, crowd management and crime investigation. See for example the European Union funded project "MYPOL" (http://www.mypol.eu/).

[3328] See e.g. International Commission of Jurists, *Achieving Justice for Gross Human Rights Violations in Myanmar – Baseline Study* (Geneva, January 2018); D. Aguirre, V. Sathisan, "Rule of law depends on reform of Union Attorney General's Office" (Myanmar Times, 27 January 2016). See also Union Attorney General's Office, *Moving Forward to the Rule of Law – Strategic Plan 2015-2019*, (Naypyidaw, 2015).

1591. The Myanmar National Human Rights Commission (MNHRC), which was created in 2011[3329] and reconstituted in 2014,[3330] in principle has a broad mandate to promote and protect human rights. The MNHRC has the power to investigate human rights violations, including the power to summon witnesses and to visit detention centres (although only with prior notification). It may initiate an inquiry when it becomes aware of "widespread, systemic or entrenched situations or practices that violate human rights", and can also receive complaints from individuals, although it cannot investigate cases pending before a court or in which a court has already taken a final decision. Following its restructuring in 2014, the MNHRC received a "B status" accreditation from the International Coordinating Committee of National Human Rights Institutions,[3331] meaning that it is partially compliant with the United Nations Paris Principles providing the benchmarks for accreditation.

1592. The main obstacles to an "A status" accreditation were insufficient diversity among its membership (in particular a lack of women), issues with its independence and funding, and being insufficiently rigorous in the implementation of its mandate.[3332] For example, the MNHRC was encouraged to be more active in addressing the rights of the Rohingya and other minorities.[3333] Civil society organizations have previously criticised the MNHRC for being insufficiently proactive (or invisible) regarding the protection of human rights in the context of armed conflicts and for not addressing human rights violations committed by security forces.[3334]

(d) Intimidation, fear of reprisal and lack of protection for victims and witnesses

1593. Impunity for human rights violations is compounded by a pattern of harassment and legal action against those who bring complaints. The Tatmadaw and Police have brought legal charges against victims and their family members, under a range of problematic legal provisions.[3335] One victim interviewed by the Mission about the offensives in Tanai Township (Kachin State) in January 2018 encapsulated the inevitability of repercussions, stating: "I want to give my testimony to you and I am ready to be arrested for it."[3336] Victims, including survivors of sexual violence, have also been publicly shamed and ridiculed by the authorities.[3337]

2. Two illustrative case studies: sexual violence and violence in Rakhine

(a) Case study 1: the use of rape and other forms of sexual violence by the military

1594. As highlighted above, the Mission considers rape and other forms of sexual violence one of the hallmarks of Tatmadaw operations. Sexual violence has been a recurring feature of military operations in Kachin, Shan and Rakhine States between 2011 and 2018, consistent with similar allegations for at least 30 years. Its systematic occurrence indicates that sexual violence forms part of a larger strategy to intimidate, terrorise or punish a civilian population. Such level of normalisation is only possible in a climate of long-standing tolerance and impunity, where military personnel have no reason to fear punishment or disciplinary action.

[3329] The Republic of the Union of Myanmar, Presidential Ordinance No. 34/2011.

[3330] Myanmar National Human Rights Commission Law, Law No. 21/2014.

[3331] Now "Global Alliance of National Human Rights Institutions".

[3332] For a full analysis of the MNHRC and its challenges, see J. Liljeblad, "The Efficacy of National Human Rights Institutions Seen in Context: Lessons from the Myanmar National Human Rights Commission", *Yale Human Rights and Development Journal*, Vol. 19(1) 2017, pp. 95-132.

[3333] For an overview of the MNHRC's response to the crisis in Rakhine State, see this chapter, section B.2.b: Case study 2 – Violence and oppression in Rakhine State.

[3334] E.g. Asian NGOs Network on National Human Rights Institutions, Progressive Voice, Smile Education and Development Foundation, Action Committee for Democracy Development, *Suspicious Minds: The Myanmar National Human Rights Commission's Trust Deficit* (2017).

[3335] See chapter VI, section A.1: Legal toolbox for restricting fundamental freedoms.

[3336] PI-043.

[3337] See following paragraphs.

1595. The impunity for sexual violence has for 30 years been raised as a key issue requiring urgent remedy.[3338] In 2006, for example, Special Rapporteur Pinheiro highlighted the high number of allegations of sexual violence against women and girls committed by members of the military as "another noteworthy illustration of the consistent and continuing pattern of impunity". He listed hundreds of cases brought to his attention.[3339] He found this trend "particularly alarming" bearing in mind likely underreporting because of trauma and social stigma. He reported not being aware of "any initiatives by the Government of Myanmar to look into these serious human rights abuses with a view to identifying the perpetrators and bring them to justice". He concluded that "the failure to investigate, prosecute and punish those responsible for rape and sexual violence has contributed to an environment conducive to the perpetuation of violence against women and girls in Myanmar".[3340]

1596. The standard response of the Myanmar authorities has been categorical denial and the intimidation of victims and witnesses. Occasionally, often in response to sustained international pressure, a superficial investigation has been undertaken. For example, in 2003, the Special Rapporteur closely followed the authorities' response to allegations that Shan women had been systematically raped by Myanmar military personnel. He received detailed briefings from the authorities on three investigations, which had found that the allegations were unfounded, exaggerated, and made with the purpose of "hurting the prestige of Myanmar and the Myanmar armed forces".[3341] The investigations were conducted by a "special team of security personnel", the Deputy Minister for Home Affairs under the guidance of General Khin Nyunt (then First Secretary of the State Peace and Development Council) and a team of the Myanmar National Working Committee on Women's Affairs led by Daw Khin Win Shwe (General Khin Nyunt's wife). The investigations concluded that there were "no rape cases committed by military personnel between 1996 and 1999 and in 2002" but there were "three cases in 2000 and 2001", the perpetrators of which had reportedly been sentenced.

1597. The Special Rapporteur considered that these investigations "lacked the independence required to be convincing and credible", having been undertaken by military and other government personnel. He concluded that investigations had not been conducted in line with international human rights standards and methodologies and had not, for example, been conducted in an environment in which victims and witnesses could testify without fear of reprisals.[3342] He proposed several options for credibly investigating these and numerous other alleged human rights violations.[3343] None was taken up.

1598. Impunity has continued since 2011. Sporadic convictions of a small number of soldiers for acts of sexual violence do nothing to suggest a significant effort to address the scope of the problem or its root causes.[3344] In 2016, the United Nations High Commissioner for Human Rights reported that he had no information that allegations of sexual and gender-based violence against women and girls in Rakhine State, "which have been reported for decades", had been investigated or that perpetrators had been held accountable.[3345] The same year, the Special Rapporteur welcomed the convictions of two military personnel for rape in 2014 but noted that "these examples do not reflect the general trend nor the structural challenges involved, which often result in impunity".[3346] In 2016, the United Nations Committee on the Elimination of All Forms of Discrimination against Women recommended that Myanmar "repeal all laws that perpetuate impunity for sexual violence committed during and after conflict and expedite the investigation and prosecution of crimes of sexual violence perpetrated by the military and armed groups".[3347]

[3338] E.g. A/HRC/7/18, para. 87; E/CN.4/2006/34, para. 79.

[3339] For an overview of civil society organizations' reports detailing instances of sexual violence in Myanmar between 1988-2007, see International Center for Transitional Justice, *Impunity Prolonged: Burma and its 2008 Constitution* (New York, 2009), p. 14.

[3340] A/61/369, para. 30.

[3341] E/CN.4/2003/41, paras. 38-46.

[3342] Ibid., para. 42.

[3343] Ibid., para. 43.

[3344] E.g., in 2016, the Special Rapporteur reported that the Ministry of Defence had informed her that 61 members of the military had been prosecuted for acts of sexual and gender-based violence between 2011 and 2015. Of these, 31 were reportedly tried before a military tribunal (A/HRC/31/71, para. 49).

[3345] A/HRC/32/18, para. 36.

[3346] A/HRC/31/71, para. 49.

1599. The lack of genuine effort to hold perpetrators of sexual violence to account is best illustrated by a number of publicly reported incidents and statements in relation to the recent government investigations into events in Rakhine State:

- On 7 November 2016, U Aung Win, a Rakhine parliamentarian and the chairperson of a State-level committee established to investigate allegations of human rights violations during the "clearance operations" in October 2016, gave an interview. When questioned about rape allegations, he said that rape was inconceivable, explaining, "They are very dirty. The Bengali/Rohingya women have a very low standard of living and poor hygiene. They are not attractive. So neither the local Buddhist men nor the soldiers are interested in them."[3348] The investigative committee had not made any findings yet.
- On 26 December 2016, the State Counsellor's Office released a statement to refute "rumours of rape" in the context of the October 2016 "clearance operations".[3349] It explained that the government's Investigation Commission had interviewed a Rohingya woman, who reportedly told the commissioners that she had not been raped and had not witnessed rape. The statement then claims that the same woman was later interviewed by journalists, to whom she said that she had been raped. The statement included several photos of the woman being interviewed and a banner with the words "fake rape". A few days earlier, the President's Office had posted a video clip showing the same woman being interviewed about the rape allegations.[3350] A review of the footage shows:
    - The woman was publicly interviewed by the commissioners, recorded and filmed, while surrounded by a group of mainly men. This breaches basic rules of human rights investigation regarding informed consent, privacy, confidentiality and security.
    - The manner in which questions were asked deprived the woman of an opportunity to freely share her experience. She was questioned in a hostile tone. The male interpreter can be heard telling her, "Don't say that". The interpreter also did not correctly convey the detail of her account. When the woman said that she had witnessed other women bleeding between their legs, the interpreter interrupted to ask, "But did you see them getting raped?" When she said, "No, I didn't, but…", he translated the entire exchange as "She did not see rape".
    - The statements prompted public ridiculing of the woman, as demonstrated by the comments under the Government's Facebook posts. As of August 2018, the "most relevant" comment, with 119 likes and 25 replies, reads, "Whore, no one wants to rape you with your fucking face. We don't even want to be within 10 feet vicinity from you, because you stink like a fucking Kalar."[3351] Other comments included insults that Rohingya women are liars, unattractive, have bad hygiene, and are "disgusting". Over a year and a half

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[3347] CEDAW/C/MMR/CO/4-5, para. 27.

[3348] J. Fisher, "Muslim civilians 'killed by Burmese army'" (BBC News, 7 November 2016), including a video of the conversation.

[3349] The Republic of the Union of Myanmar, State Counsellor Office, "Information Committee refutes rumours of rapes" (26 December 2016, http://www.statecounsellor.gov.mm/en/node/545).

[3350] Myanmar President Office (Facebook post, 23 December 2016) (https://m.facebook.com/story.php?story_fbid=1181529845228083&id=813476528700085&tra=1&refid=52&__tn__=%2As%2As-R) (accessed August 2018).

[3351] https://www.facebook.com/myanmarpresidentoffice.gov.mm/videos/1181529845228083/?comment_id=1181606718553729&comment_tracking=%7B%22tn%22%3A%22R%22%7D (accessed August 2018).

  later, these posts and comments still feature on the President's Facebook page.

  - The statements from the President's and State Counsellor's Offices were released before the Investigation Commission had released its interim or final report, i.e. while the investigation was still underway.

- On 30 April 2018, the Tatmadaw Commander-in-Chief, Senior-General Min Aung Hlaing, posted on his Facebook page a read-out of his meeting with a delegation of the United Nations Security Council. After stating that "sexual violence is abominable on the ground of culture and religion of Myanmar" and that "severe action is taken against the offenders", he added, "No sexual violence happened in the history of Myanmar Tatmadaw".[3352]

1600. Against a backdrop of decades of denial of credible allegations of rape and other forms of sexual violence, and when public officials have participated in the cover-up of such crimes and the ridiculing of alleged victims and witnesses, it is unsurprising that rape and sexual violence have become a widespread, systematic and institutionalised tactic of the security forces' operations.

(b) Case study 2: violence and oppression in Rakhine State

1601. Soon after the violence in Rakhine State in 2012, the then Special Rapporteur on the situation of human rights in Myanmar expressed concern about "widely divergent" information regarding the events.[3353] He stressed that truth and accountability would be critical to ensure reconciliation in Rakhine State and that, "if the facts are not established, exaggerations and distortions will fill the vacuum to further fuel distrust and tensions between communities".[3354] The facts were never established. There was no accountability. Relationships between communities in Rakhine State significantly deteriorated – amid an intense disinformation campaign vilifying the Rohingya, whose rights were further restricted to unbearable levels. As explained above, this led to increased tensions, to a deterioration of the security situation and ultimately to the ARSA attacks and Tatmadaw "clearance operations".

1602. Since 2012, the Myanmar authorities have conducted several official investigations and inquiries into the situation in Rakhine State and the episodes of violence. However, none was a credible investigation into the allegations of human rights violations and abuses, in line with international standards (prompt, thorough and effective, independent and impartial, and transparent). None contributed to accountability.

1603. Following the 2012 violence in Rakhine State, President Thein Sein created the Inquiry Commission on Sectarian Violence in Rakhine State. The commission had a relatively broad mandate. The initial 27 commissioners comprised only four women and six Muslims. Two of the Muslims were later dismissed. None of the commissioners was Rohingya but several had demonstrated public anti-Rohingya views. In addition to the general anti-Rohingya bias that permeates the report,[3355] the work undertaken by the Inquiry Commission was flawed. It did not critically examine the alleged human rights violations or the opposing perceptions of the respective communities on the events and its underlying causes. It did not establish the role of the security forces, attribute responsibility, or include robust calls for accountability.[3356] The commission did not tackle the opposing viewpoints it had identified among the communities, but reinforced the narrative of a longstanding "intercommunal conflict" and "security threat", validating prejudices, discriminatory acts and policy options.[3357] Its recommendations generally emphasized the need for heightened security and rule of law.[3358] The question of how stricter law enforcement and increased presence of security forces would contribute to better protection for the Rohingya, in a context of prevailing impunity and where existing laws were unjust and discriminatory, was not considered.

[3352] Post on file with the Mission.

[3353] A/67/383, para. 58.

[3354] Ibid.

[3355] The Republic of the Union of Myanmar, *Final Report of Inquiry Commission on Sectarian Violence in Rakhine State* (8 July 2013). The Mission acknowledges that the report contains some important recommendations. For example, it clearly states that, to ensure peaceful coexistence in Rakhine State, the "government and all responsible entities" should "start by ensuring protection of human rights for all parties involved in the conflict" (see para. 12.13). Many of its recommended actions are also conditional on compliance with international human rights standards.

1604. When in January 2014 fresh allegations of serious human rights violations emerged in the context of a police operation in Du Chee Yar Tan village in Rakhine State, including of killing, sexual violence and destruction of properties through arson,[3359] the Special Rapporteur expressed concern that domestic investigations into the incident were unsatisfactory.[3360] A Rakhine Investigation Commission and the Myanmar National Human Rights Commission visited the village, concluding that allegations of Rohingya killings and anti-Rohingya violence were false or "unverifiable and unconfirmed".[3361] The President subsequently appointed a 10-member Investigation Commission. This commission released a summary report of its findings, with similar conclusions.[3362] The Mission takes note of concerns raised by civil society organizations that the initial visit of the Rakhine Investigation Commission was preceded by intimidation of and warnings to villagers not to talk about killings.[3363] While the Mission cannot confirm this, it would be consistent with patterns established elsewhere. The report itself also raises questions. For example, it states that Rohingya properties were not set on fire by the police (as many Rohingya had reported), but by "a group opposed to the Government with political motivations for starting the fire and subsequent unrest". This finding was not explained and the alleged group was not identified.

1605. Tensions in the region increased, leading to the first ARSA attacks in October 2016 and the Tatmadaw "clearance operations". Credible allegations of serious human rights violations by the Myanmar security forces were rife and included acts that could constitute crimes against humanity. The authorities undertook at least four inquiries: at the Union-level, by the police, by the Tatmadaw and at State-level.[3364]

[3356] The recommendations contain general statements of principle, e.g. "the security and emergency response personnel must carry out their duties lawfully and those who break the law must be held accountable under existing laws".

[3357] Interestingly, the commission recommended that the Government form a "Truth-Finding Committee to determine the root causes of sectarian violence between the Buddhist and Islamic communities".

[3358] The government subsequently established a Central Committee for Implementation of Stability and Development in Rakhine State, chaired by then Vice-President Dr. Sai Mauk Kham. This Committee had six subcommittees, tasked to implement the policies adopted by the Central Committee and the recommendations of the Inquiry Commission. These followed the course set out by the Inquiry Commission and the President. They were not focused on human rights or accountability.

[3359] See OHCHR, "Pillay calls for killings in northern Rakhine State to be investigated" (23 January 2014).

[3360] A/HRC/25/64, paras. 47-48.

[3361] A/HRC/25/64/Add.1, paras. 20-22.

[3362] *Summary Report of the Investigation Commission for the Du-Chee-Yar-Tan incident of January 2014 and related events*. February 2014 (https://drive.google.com/file/d/0Bwd1WXitJ5PHdVJxWGtSdVISX0U/view, accessed August 2018).

[3363] International Coordinating Committee Sub-Committee on Accreditation - Accreditation of the National Human Rights Commission of Myanmar, Stakeholder submission by The Asian NGO Network on National Human Rights Institutions and Burma Partnership (16 July 2015).

[3364] In August 2016, President Htin Kyaw established a nine-member Advisory Commission on Rakhine State, chaired by former United Nations Secretary-General Kofi Annan and composed of six national and three international experts. Its mandate was focused on proposing concrete measures for improving the welfare of all people in Rakhine State. It was not mandated to investigate specific cases of alleged human rights violations. The Government subsequently formed a Committee for Implementation of the Recommendations on Rakhine State, led by Union Minister for Social Welfare, Relief and Resettlement Dr. Win Myat Aye; as well as an Advisory Board for the Implementation of

1606. On 1 December 2016, President Htin Kyaw established a 13-member Investigation Commission for Maungdaw in Rakhine State.[3365] The commission was chaired by Vice-President Senior General Myint Swe (the military appointed Vice-President) and included another former Tatmadaw general (Aung Kyi) and the Chief of the Myanmar Police Force (Major-General Zaw Win). There were no Rohingya on the commission and only two women. In early January 2017, the commission issued an interim report,[3366] finding "no cases of genocide and religious persecution in the region". This was purportedly proven by the continued presence of Rohingya and the presence of mosques and religious edifices in Maungdaw. The commission found no sufficient evidence of rape, arson, illegal arrests or torture.

1607. On 6 August 2017, the commission released a summary of its final report.[3367] It concluded that, while the security forces generally followed applicable rules and regulations, there may have been cases of violations "in areas of weak command". It stated that action was being taken in relation to these violations, with no further detail. In relation to specific allegations of human rights violations, including killings, torture, rape and arson, the commission indicated that there had been cases where action was taken but that it was difficult to gather evidence or to "identify who set fire to buildings with any level of certainty, whether it was security forces or villagers or members of terrorist organizations". It noted that, in February and March 2017, 21 cases were filed for "murder, rape, arson, destruction of evidence, loss of money/property and deaths", but that for some cases there were "mismatches between the complaint and the results of the investigations" and in other cases "the complaints were fabricated". Its methodology and skills regarding sensitive human rights investigations have been called into question.[3368] The commission made no specific findings regarding the role and responsibility of the security forces.

1608. At the request of the Investigation Commission, the Tatmadaw and police formed teams to investigate allegations of their own wrongdoing. On 9 February 2017, the Tatmadaw stated it had formed a five-member Inquiry Board, led by Lieutenant-General Aye Win (Inspector-General of the Defence Services). This Inquiry Board was tasked with investigating the findings of the OHCHR Flash Report "Interviews with Rohingyas fleeing from Myanmar since 9 October 2016", which was on 3 February 2017. The OHCHR report concluded, *inter alia*, that "the attacks against the Rohingya population in the area (killings, enforced disappearances, torture and inhuman treatment, rape and other forms of sexual violence, arbitrary detention, deportation and forced transfer as a result of violence and persecution) seems to have been widespread as well as systematic, indicating the very likely commission of crimes against humanity".[3369] On 23 May 2017, the Tatmadaw True News Information Team released the results of Lieutenant-General Aye Win's investigation. It found that 12 out of 18 "accusations" made in the Flash Report were "totally wrong" and the remaining six were "untrue due to false accusations and exaggerations". No further detail was provided. Instead, the Tatmadaw investigation noted that one soldier had "used a motorbike without permission from its owner" and three

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Recommendations on Rakhine State, led by Dr. Surakiart Sathirathai, former Deputy Prime Minister and Minister of Foreign Affairs of Thailand.

[3365] The Republic of the Union of Myanmar, President Office, "Formation of Investigation Commission" (Notification 89/2016, 1 December 2016).

[3366] The Republic of the Union of Myanmar, President Office, "Interim Report of the Investigation Commission on Maungtaw" (3 January 2017).

[3367] Summary of the Report of the Investigation Commission for Maungdaw in Rakhine State (6 August 2017), available here: http://www.myanmarembassydhaka.com/wp-content/uploads/2017/10/Summary-Report-of-the-Investigation-Com.-8.8.17.pdf (accessed August 2018).

[3368] One example regarding the public interviewing and shaming of an alleged victim of sexual violence has been discussed in detail above.

[3369] OHCHR, *Report of OHCHR mission to Bangladesh – Interviews with Rohingyas fleeing from Myanmar since 9 October 2016 – Flash Report* (3 February 2017).

individuals had been involved in the beating of a village administrator and villagers. These offences were reportedly punished.[3370]

1609. In February 2017, the Ministry of Home Affairs reportedly established a five-member investigation committee, led by Police Brigadier-General Win Tun, to investigate the allegations of human right violations by the police forces during the clearance operations in 2016.[3371] The Mission has not seen a final report of this inquiry. Media reports suggest that five policemen seen beating a group of Rohingya in Koe Tan Kauk village in Rakhine State on a (widely viewed) video were sentenced to two months imprisonment[3372] and that three border guard officers were sentenced to imprisonment for negligence during the 2016 operations.[3373] The latter conviction was reportedly not for excessive use of force or ill-treatment of Rohingya but for failing to protect the security post against the attack in the first place. It is unclear whether these convictions are related to the Police's investigation committee. Earlier the State Counsellor's Information Committee had already issued a statement that action was being undertaken against those identified in the video.[3374]

1610. Meanwhile, another 11-member State-level committee, formed by the Rakhine State Parliament and headed by Rakhine politician Aung Win, conducted its own investigation. The bias of Aung Win has been highlighted above. The committee submitted interim and final reports to the Rakhine State Parliament in December 2016 and March 2017 respectively. The Mission saw a copy of the interim report[3375], but only news reports about the final report.[3376] These suggest that the committee did not find any wrongdoing on the part of the security forces, nor made any recommendations regarding accountability. It detailed the "terrorist attacks" by the "Mujahideen" operating in Maungdaw and Rathedaung Townships.

1611. The Union-level Investigation Commission for Maungdaw in Rakhine State presented its final report, which also concluded that most, if not all, accusations levelled against the security forces were false. Less than three weeks later, the Tatmadaw launched further "clearance operations" following a new ARSA attacks on 25 August 2017.

1612. In the year since the "clearance operation" began, there have been no credible initiatives for a prompt, independent and impartial, thorough and effective, and transparent investigation into the allegations of human rights violations. On 13 November 2017, the Tatmadaw True News Information Team released the "findings of the Investigation Team in connection with the performances of the security troops during the terrorist attacks in Maungtaw region, Rakhine State".[3377] The Investigation Team was again led by Lieutenant-

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[3370] The Republic of the Union of Myanmar, Ministry of Information, http://www.moi.gov.mm/moi:zg/?q=news/3/01/2017/id-10311

[3371] See Htoo Thant, "Military to punish unlawful acts in Rakhine" (Myanmar Times, 2 March 2017); see also The Republic of the Union of Myanmar, President Office, "Tatmataw ends area clearance operations in northern Rakhine" (undated, available here http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-7288).

[3372] Reuters, "Myanmar to probe police over allegations of crimes against Rohingya" (13 February 2017).

[3373] Frontier Myanmar, "Senior police jailed over Rakhine guard post raids" (25 February 2017); Htet Naing Zaw, "Govt Jails Maungdaw Border Guard Police for Negligence" (The Irrawaddy, 24 February 2017).

[3374] Information Committee, "Press Release on a video clip which members of Police Forces took during area clearance operation in Kotankauk Village, Maungdaw" (Facebook post, 2 January 2017), available at https://www.facebook.com/InfomationCommittee/posts/663761827130260.

[3375] The interim report was published on the Rakhine Hluttaw's official Facebook page: https://www.facebook.com/rakhinestatenews/photos/a.321754331295753.1073741828.319947374809782/771298783007970/?type=3 (accessed July 2018).

[3376] Release of the full report was reported in the media but the Mission was unable to trace a copy of the actual report. See e.g. Yee Ywal Myint, "Maungtaw-Rathedaung probe committee submits final report" (Myanmar Times, 22 March 2017); and in Myanmar language media: https://www.facebook.com/rakhinestatenews/posts/816665458471302; https://www.facebook.com/rfaburmese/videos/10155660569523128/; https://www.facebook.com/themyanmartimes/photos/a.269945775975.153936.269917285975/10154340883955976/?type=3.

[3377] Hard copy and Facebook post on file with the Mission.

General Aye Win and reportedly toured northern Rakhine State for 26 days, between 13 October and 7 November 2017, interviewing 3,217 villagers in 58 villages and collecting the accounts of 804 witnesses. The team did not seek the views of the 700,000 Rohingya who had fled to Bangladesh. The Team categorically concluded:

> *The findings of the investigation have proved that all security members up from the leaders to the privates were aware of and strictly abided by the orders and directives of superior bodies, especially the rules of engagement-ROE in connection with the rights of self-defence and in discharging duties during the armed conflicts and anti-terrorist operations. […] There was no death of innocent people. Although the Bengali villages where the engagements took place were burning and women and children were fleeing their homes, not a single shot was fired on them. The security forces were only fighting against the ARSA Bengali terrorists. They never shot at the innocent Bengalis. […] As such, the security forces abided by laws related to the wars in conducting area clearance operations. So, it is found that those security forces did not perform the use of excessive force.*

1613. In relation to the arrest and detention of Rohingya, the Team found:

> *In discharging duty of peace and stability of the regions, the security forces exposed and arrested ARSA Bengali terrorists and their supporters. […] In arresting, only members of Border Guard Police Force who were attached to the Tatmadaw columns arrested those Bengalis, and Tatmadawmen took security measures. After arresting, those Bengalis were systematically handed over in good situations to the local police stations. Members of security forces did not commit persecution against those persons in arresting. It was found that those Bengalis were exposed and arrested under provisions of the Geneva Conventions and the laws of wars.*

1614. However, two months later, on 11 January 2018, the Tatmadaw released a statement from the same Investigation Team, still headed by Lieutenant-General Aye Win, that it had conducted an additional 12-day investigation in the village of Inn Din, after receiving reports of a mass grave.[3378] The investigation purportedly revealed that the security forces had arrested 10 men and that:

> *Although it needed to hand over 10 Bengali terrorists to the police station under the procedures, it was found that decision was made to kill them at the cemetery.*

1615. According to the statement, two police vehicles had been burned in the attack and the security forces had been busy carrying out "peace and stability of the region", and so there "was no situation to send 10 Bengali terrorists to the police station". In other words, it was inconvenient to follow the rules and easier to kill. The statement further claims that the 10 men had been brought to the cemetery the following morning, where the security forces, together with villagers, killed them. The Investigation Team found that the incident "was not submitted to superior levels" but that "the officials who needed to control subordinates despite no direct relation to the incident will be necessarily exposed and taken action". The Tatmadaw later stated that legal action was being taken against members of the Myanmar Police Force and civilians under their respective laws and that seven "officials and other ranks of the Tatmadaw" were convicted and sentenced to 10 years imprisonment under military law. The Mission has been unable to confirm whether the convicted men are serving these sentences.[3379]

1616. The Government hailed this development as a sign that the Tatmadaw took responsibility. However, this additional statement raises more questions as to the credibility of the investigation, given the same Team's initial claim that no violations had been committed. The additional investigation and admission of responsibility was in all likelihood triggered by the imminent publication by Reuters of an investigative piece on the mass grave in Inn Din.[3380]

[3378] Facebook post on file with the Mission.

[3379] State media reported that these prisoners had been released in the context of the Presidential pardon upon the inauguration of President Win Myint. The same day the Government denied these reports. See H. Beech, "Did Soldiers Jailed for Killings Go Free? Myanmar TV Says Yes (Briefly)" (The New York Times, 18 April 2018).

1617. Meanwhile, the Myanmar National Human Rights Commission (MNHRC) has undertaken no meaningful action in relation to the events in Rakhine State.[3381] In July 2012, it called for measures to build trust between communities and strict law enforcement. In May 2013, it endorsed the Government's approach to the situation in Rakhine State. In 2014, the MNHRC informed that it had undertaken a field visit to Du Chee Yar Tan, but that the serious allegations of human rights violations in that village were "unverifiable and unconfirmed". It recommended increased security measures and better ammunition for the police. In 2015, the MNHRC visited Buthidaung and Sittwe prisons, making some recommendations regarding prison conditions. In relation to the 2016 ARSA attacks and "clearance operation", the MNHRC remained silent. Following the August 2017 "clearance operations, in October 2017 it recommended additional police stations, police outposts and Border Guard Force outposts "as necessary". In December 2017, it urged the authorities to ensure that the two arrested Reuters journalists could enjoy their human rights in prison by not torturing them, giving access to healthcare and family visits. It did not address whether the detention itself was arbitrary. In January 2018, the MNHRC condemned an ARSA attack. At no point during these six years, however, did the MNHRC call for or conduct a full, independent investigation of the alleged human rights violations committed by the security forces. Nor did it address the systemic discrimination against Rohingya, despite this falling within its mandate.[3382]

1618. The Government took no steps to ensure a prompt, effective and thorough, independent and impartial investigation as required by international law. It refused to cooperate with or give access to the Mission, which was operational throughout this period. It permitted the demolition and bulldozing of Rohingya villages, and subsequent reconstruction efforts, without prior investigation or collection of evidence from the crime scenes.

1619. On 30 July 2018, nearly one year after the events, the Government announced the establishment of an "Independent Commission of Enquiry",[3383] comprised of two national and two international "personalities". None appears to have a background in complex human rights or criminal investigations. Information about the commission's legal framework, terms of reference, or scope and power to investigate is scarce. However, several public statements from the Myanmar authorities and the selected commissioners suggest prejudice, compromising its impartiality from the outset. For example, the spokesperson of the Office of the President said that, "We have formed the Independent Commission of Enquiry to respond to false allegations made by the UN agencies and other international communities".[3384] During a press conference, the Chairperson of the Commission said that, "there will be no blaming of anybody, no finger-pointing of anybody because we don't achieve anything by that procedure".[3385] She considered that accountability was unhelpful and amounted to "quarrelling". One of the national commissioners, Dr. Aung Tun Thet, is the chief coordinator of the Government's "Union

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[3380] Regarding the arrest of the Reuters journalists, see chapter VI, section A.1: Legal toolbox for restricting fundamental freedoms.

[3381] All statements are available online: http://www.mnhrc.org.mm/en/statements-2/

[3382] The MNHRC is explicitly mandated to initiate an inquiry "where it becomes aware of widespread, systematic or entrenched situations or practices that violate human rights". See art. 28 of the Myanmar National Human Rights Commission Law (Pyidaungsu Hluttaw Law No. 21/2014 of 28 March 2014).

[3383] The Republic of the Union of Myanmar, Office of the President (Press Release 8/2018), "Government of the Republic of the Union of Myanmar Establishes the Independent Commission of Enquiry" (30 July 2018).

[3384] Global New Light of Myanmar, "U Zaw Htay, Spokesman of the Office of the President: the questions have been raised as to the reasons for the removal of the Facebook accounts and pages associated with Tatmadaw" (29 August 2018).

[3385] International Commission of Enquiry, Press Conference of 16 August 2018 in Naypyidaw, video available at: https://www.facebook.com/theirrawaddyburmese/videos/218544952337657/.

Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine", which is mandated to implement development projects in Rakhine State. This has involved the overseeing of the bulldozing of burned Rohingya villages, which is likely to have destroyed criminal evidence.[3386] Dr. Aung Tun Thet is also extensively quoted in the media denying that any ethnic cleansing or genocide took place and that the Government's position on this question must be heard.[3387] The Mission has therefore concluded on reasonable grounds that this newly-created commission will not and cannot provide a real avenue for accountability, even with some international involvement.

3. Conclusion

1620. The authorities of Myanmar, both military and civilian, have failed to condemn, investigate or punish perpetrators of gross human rights violations. Rather, they have categorically denied violations, created legal obstacles to accountability, destroyed evidence of crimes and actively nurtured and perpetuated a climate of impunity that has emboldened perpetrators. These acts are in violation of the international human rights norms and standards highlighted at the outset of this chapter.

1621. Impunity is deeply entrenched in Myanmar's political and legal system, effectively placing the Tatmadaw above the law. The Constitution and other laws provide for immunities and place the Tatmadaw beyond civilian oversight. The Tatmadaw can independently adjudicate its own matters, with the Commander-in-Chief having the final word. The rare cases, brought mostly before military courts without transparency, are wholly insufficient to counter the overall trend of impunity. Additionally, military courts are inadequate forums to deal with large-scale human rights violations perpetrated by the military. Nor are civilian courts the answer; the domestic justice system is not independent and lacks capacity to respect fair trial standards. Nor does it have the capacity to deal with the breadth and gravity of the violations perpetrated by high-level officials, especially crimes under international law. Those who file complaints often face intimidation and reprisals. In short, there is no rule of law in Myanmar and accountability at the domestic level is currently unattainable

1622. Impunity acts as an obstacle to the rule of law, sustainable peace and stability, and Myanmar's transition to democracy. In the Framework of Analysis for Atrocity Crimes, developed by the United Nations Offices of the Special Advisers on the Prevention of Genocide and on the Responsibility to Protect, a history of atrocity crimes, in combination with a record of impunity and weak State institutions, is listed among the core risk factors for further violations.[3388]

C. Way forward

1623. Myanmar's transformation into a democratic State has barely begun. The near-total impunity for the most serious and shocking violations of human rights, and the apparent unwillingness to change this, are major red flags. Myanmar must vigorously pursue its transformation into a fully democratic State based on equality, accountability and respect for human rights. The alternative is a continuation of the same cycles of violence and repression, at risk of ultimately jeopardizing the little progress made.

1624. The Mission considers that three, interrelated, fundamental shifts are required to avoid the repetition of the kind of violence and atrocity crimes outlined in this report.

- **Democracy**: the security forces, and the Tatmadaw in particular, must be brought under civilian oversight. All State institutions must be answerable to the people. This may require a complete reconstitution and vetting of the Tatmadaw.

[3386] Dr Aung Tun Thet reportedly denied this. See S. Naing, "Bulldozing Rohingya villages was not 'demolition of evidence', Myanmar official says" (Reuters, 26 February 2018).

[3387] E.g. Global New Light of Myanmar, "Myanmar's perspectives should be voiced at Berlin Conference on Myanmar Genocide: Dr Aung Tun Thet" (27 February 2018).

[3388] A/70/741-S/2016/71 (annex).

- **Inclusivity**: a reconciliation process can only be driven by a concept of the State and Nation that is inclusive, based on equality and respect for human rights. Citizenship should not be conditional on the belonging to a "national race", and human rights should not be conditional on being a "citizen".
- **Accountability**: The climate of impunity must be ended. Unless the Myanmar military and other security forces are held accountable for past, current and future crimes, violence and associated atrocity crimes will happen again.

1625. Realizing these shifts requires a constitutional reform process and will take time. However, significant steps can be taken immediately, both at the domestic level and internationally.

1. Steps towards a system of accountability at national level

1626. The Mission encourages the Myanmar authorities to convene – as a matter of urgency – all relevant stakeholders, with support from international partners, to adopt a comprehensive national road map and action plan towards a system that ensures accountability for human rights violations in Myanmar. The road map and action plan should contribute to the three key transformative shifts highlighted above.

1627. The Government of Myanmar, in close consultation with all stakeholders, including civil society, has the responsibility to formulate the most appropriate and feasible actions, as well as timelines for implementation. The Mission recommends it includes steps in the following areas:

(a) Acknowledgement

1628. Change starts with acknowledgement. The Government and other authorities of Myanmar should immediately condemn all human rights violations and abuses (past, present and future), without exception and without discrimination. The condemnation should be specific: it should explicitly acknowledge the serious violations that have occurred in Kachin, Rakhine, and Shan States and elsewhere. It should explicitly acknowledge specific groups that have borne the brunt of the military and other security forces' repression. This includes ethnic and religious minorities, but also human rights defenders, journalists, students, farmers and monks. Allegations and complaints should be taken seriously, and the pain and suffering of all victims must be acknowledged.

1629. The Mission is concerned that neither the current peace process nor the Government's initiatives to resolve the crisis in Rakhine State include discussions on how to ensure accountability for violations of international law. Any political process aimed at resolving these conflicts and crises must include the issue of accountability in its agenda, with the goal to bring about reconciliation and sustainable peace.

(b) Security sector reform

1630. Without significant reform of the security sector, serious human rights violations and atrocity crimes will occur again, with certainty. The Framework of Analysis for Atrocity Crimes highlights several factors associated with security institutions that increase the risk of atrocity crimes, including the "lack of effective civilian control of security forces" and "absence of or inadequate external or internal mechanisms of oversight and accountability".[3389]

1631. Through a political, constitutional and legislative reform process, the Myanmar authorities must reconsider the place, role and power of the military and other security forces in society. Steps would be required in at least five areas:

- Review, repeal and revision of all military and other security forces' policies, tactics, rules of engagement and training manuals to ensure full compliance with international law, in particular the principle of non-discrimination and equal protection of all civilians regardless of race, religion or nationality.

[3389] A/70/741-S/206/71, annex, risk factors 5 and 7.

- Clear articulation of the roles and responsibilities of the respective security forces, for example avoiding the use of the military in situations that essentially require a law enforcement or crowd control response. This requires a clear distinction between the "external" defence (military), "internal" public safety (police) and intelligence functions; the removal of the police and intelligence functions from the Tatmadaw command structures; and the disbanding of militias and border guards, and an overall review of policies around their use. The reform of the police, to transform it into a police service completely independent of military control and operations, is especially urgent. International support and assistance can contribute to this.
- Enhanced civilian oversight to ensure a democratic framework within which the military and other security services are at the service of the population, under the oversight of elected officials representing the population (e.g. parliamentary oversight committee; executive oversight; judicial review).[3390] This should include creation of an external, independent body to receive reports from within the security forces, as well as from the public, of wrongdoing by the security forces, to ensure prompt, independent, impartial, effective and thorough investigations.
- A vetting or screening process to remove officials responsible for serious violations of international law from positions of authority and to prevent their promotion. Enhanced inclusion of personnel from diverse population groups.
- Removal of military prerogatives including in politics and the economy.

(c) Narrowing the scope of military justice

1632. The jurisdiction of military courts should be limited to military personnel committing military disciplinary offenses, excluding human rights violations and serious violations of international humanitarian law.[3391] Especially where cases involve civilians, as perpetrators or as victims, these should be brought before the civilian justice system. The rationale is twofold: the commission of human rights violations is necessarily outside the scope of the duties performed by military personnel, and military courts cannot be trusted to try such serious offenses properly as they may be tempted to shield military perpetrators, in particular senior ones.[3392] In the context of Myanmar in particular, there can be no prospect for justice should human rights violations committed by the military continue to fall within the jurisdiction of military tribunals.

1633. In parallel to the restriction of the jurisdiction of military courts, efforts should be taken to ensure that trials under the military justice system are fully compliant with international fair trial norms and standards. In particular, military courts should be independent of the military chain of command in their determination of cases and should meet the standards of due process and procedural fairness.

(d) Accelerated rule of law reform

1634. Rule of law reform at domestic level should have high priority. The Mission is aware of several projects in this area and encourages States to redouble their support to Myanmar. Rule of law reform must, however, be based on an understanding of rule of law that is consistent with international standards, which is different from the concepts of "law and order" or "rule by law":

[3390] For a discussion of how security sector reform contributes to the prevention of atrocity crimes, see A/HRC/37/65, para. 39-57.

[3391] See e.g. Principles to Combat Impunity, principle 29; also Draft Principles Governing the Administration of Justice Through Military Tribunals (E/CN.4/2006/58), principle 9. These principles are increasingly considered as reflective of international law. See e.g. A/70/438, para. 51.

[3392] See A/68/285, para. 67.

> *Rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.*[3393]

1635. The law reform process must be accelerated, thoroughly revising all laws to ensure that they are just, fair, and fully compliant with international human rights norms and standards. This includes a repeal of all discriminatory laws as well as pieces of legislation that unduly restrict the exercise of fundamental freedoms. It also includes the adoption of legislation incorporating crimes under international law within domestic criminal law, removing all existing immunities and amnesties for such crimes and other serious human rights violations and then ensuring implementation of the law through independent civilian courts. It would also include ratification of all international human rights conventions not yet ratified by Myanmar, as well as their individual complaints mechanisms.

1636. An enhanced focus is also required on judicial reform. This includes measures to strengthen the independence of the judiciary and build their legal and judicial expertise. No civilian justice personnel should be under the control or influence of the military or the other branches of government. All judges in superior and appellate courts should be legally qualified. Additionally, programmes are required to build capacity to adequately investigate, prosecute and bring to trial cases of serious human rights violations. Such cases, in particular where they amount to crimes under international law, require specialised knowledge and expertise.

1637. The Mission further encourages the Government of Myanmar to consider establishing a cross-sectoral and cross-institutional National Mechanism for the Prevention of Atrocity Crimes, with the role of conducting periodic risk assessments, establishing an early warning system, developing training programmes, recommending and creating policies, and working with civil society, as well as regional and international organizations towards the prevention of atrocity crimes.

(e) Truth-seeking

1638. The Mission is particularly concerned about the prevailing narratives of hate, exclusion and intolerance in Myanmar. It is also concerned about the radically divergent and often incompatible understandings, among segments of the population, of history and the circumstances of the commission of gross human rights violations and abuses. Exaggerations, distortions and misunderstandings only serve to fuel tension and distrust. It is of the utmost importance that the Government, with appropriate support from the international community, takes credible initiatives to satisfy the right of victims and society to the truth about alleged human rights violations and abuses. While there is an urgent need for credible truth-seeking initiatives for Rakhine State specifically, it is also required for northern Myanmar and the rest of the country. It would contribute to the formation of a common national narrative based on inclusion, tolerance and respect for the human rights of all.

1639. This requires the establishment of mechanisms and procedures empowered to seek information, ascertain facts and effectively reveal the truth about what happened. Importantly, such mechanisms can give voice to victims and affirm their status as rights holders and contribute to social integration.[3394] However, such mechanisms must be appropriately designed and led by independently minded commissioners or experts who meet the highest standards of professionalism, integrity and expertise. They must be free from political or military influence.

[3393] Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616).

[3394] A/HRC/24/42, paras. 90-91.

(f) Empowering victims and civil society

1640. There is an immediate need to provide victims of serious human rights violations with the care, support and assistance they need. While communities have shown remarkable resilience, little social support has been possible when living in fear of the next attack or arrest. Most such support for victims has been aimed at coping rather than healing. The Government of Myanmar should ensure that psychosocial support and trauma counselling are provided as core components of a strategy to empower victims and provide redress, and to avoid recurrence of violations.

1641. The people of Myanmar have suffered at the hands of the military and other security forces. This is evidently so for all ethnic and religious minority groups, including the Rohingya, but also for the Bamar or Buddhists in general. They have never had access to truth, justice or reparations. This must change. Any accountability process or measure must be human rights based, ensuring that the rights and needs of victims are placed at the centre of their design and implementation. This requires a fully participatory process. Victims of human rights violations, and civil society generally, must be consulted at every step of the accountability process, giving them a voice and restoring their dignity.

1642. A first step in enabling and empowering victims of human rights violations is to recognize the legal status and identity of each person, and to ensure that each person has proof of that. In Myanmar, where large numbers of the population have not been registered at birth and/or have been arbitrarily deprived of their nationality and identity documents, proof of legal status and identity is a challenge for many victims of human rights violations. Legal identity is important to have rights respected, for claiming them and for obtaining redress when they are violated.[3395] The Government should take immediate steps to ensure that all individuals in or from Myanmar have appropriate recognition and documentation of their legal status and identity.

1643. Equally important is to ensure an enabling environment where individuals can file complaints and seek redress. This requires immediate steps to halt the intimidation, harassment and reprisals against those who speak out. Victims of human rights violations, but also human rights defenders, lawyers, journalists and civil society actors more broadly, must have the space to enjoy their human rights and seek justice for abuses. It is critical that the full enjoyment of fundamental freedoms, including the rights to freedom of opinion and expression, association and peaceful assembly, is actively promoted.

1644. Closely linked is the need to ensure the presence of an organized, knowledgeable, strong and representative civil society, and a free, diverse and independent media sector that is able to operate freely.[3396] In the Framework of Analysis for Atrocity Crimes, the lack of such civil society and media sector is listed as an indicator for increased risk of atrocity crimes.[3397]

1645. Steps should also be considered to improve and transform the education system to ensure that it is based on principles of inclusivity, tolerance, equality and the respect for human rights of all, actively combating exclusionary rhetoric and divisive narratives. Human rights should be part of the standard curriculum in all schools. The teaching of history should be carefully reviewed to avoid the perpetuation of divisions. Teaching should be focused on stimulating children's capacity to analyse and think critically.

(g) Reparations

1646. The Government of Myanmar should, as a matter of priority, take steps to realize victims' right to full and effective reparation for the harm suffered. As outlined at the beginning of this chapter, this entails restitution, compensation, rehabilitation and satisfaction. Particularly relevant for Myanmar are measures to restore liberty, identity, family life and citizenship, as well as the return to one's place of residence; return of property and rebuilding of homes; compensation for damages; medical and psychological care; legal and social services; search for whereabouts of the missing or disappeared; search for, identification and burial of bodies; as well as commemorations and tributes to victims.

[3395] A/HRC/30/42, para. 41.

[3396] A/HRC/37/65, para. 20.

[3397] A/70/741-S/206/71, annex, risk factor 6.

1647. Reparation is the legal duty of the State. It is particularly important as a symbol of acknowledgement of responsibility.[3398] It promotes trust in the State and its institutions, and a sense of belonging of those whose rights were previously trampled upon. In Myanmar, the harm is of tremendous proportions, requiring a wide range of coherently organized reparatory measures. Restitution and compensation are especially important. The violence has resulted in significant economic loss, mostly for the victims. It must be met by the perpetrators and the State, which is directly responsible.

2. Criminal accountability at international level

1648. The primary responsibility for investigating and prosecuting crimes under international law lies with the national authorities of Myanmar. While any domestic system would have difficulties addressing the scale of violations committed in Myanmar, the Myanmar authorities have demonstrated that they are unable and unwilling to meaningfully engage in this process. The military's involvement in all levels of government and the legal and judicial deficiencies outlined above mean that criminal accountability at the domestic level, in particular for those who bear the greatest responsibility, is unattainable and will remain so for the foreseeable future. As such, the impetus for accountability must come from the international community.

1649. While two of the fundamental shifts outlined above (democracy and inclusivity) will largely have to be driven domestically, the international community has an important role in achieving the third shift (accountability). By initiating an accountability process, the international community can put a first crack in the massive impunity wall. To ensure its legitimacy, such process must be driven by the following principles:

- **Be transformative**: designed to address patterns of impunity and their underlying structural causes. It must assist in addressing the root causes of the recurrent violations and in further transforming society into one based on the rule of law, non-discrimination, equality and respect for human rights.
- **Be victim-centred**: driven by the interests of victims and designed to empower them, restore their dignity, and build their confidence in the State. Their views must be sought and they must be encouraged to participate in the process.
- **Be comprehensive**: including measures to realize the right of victims to know the truth and their right to reparations, in addition to establishing individual criminal accountability for serious crimes under international law.
- **Be inclusive**: allowing all victims to seek justice and an effective remedy on equal footing, regardless of their ethnic or religious background, and avoiding the exacerbation of tensions. An accountability process must not be focused only on the situation in Rakhine State.

1650. The Mission recommends that the international community takes the following steps:

(a) An international justice mechanism

1651. There must be an international judicial mechanism with jurisdiction to deal with serious crimes under international law in Myanmar. The International Criminal Court (ICC) is the most appropriate venue. As a permanent institution, it has the capacity to investigate immediately upon its jurisdiction being triggered. Although Myanmar is not a party to the

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[3398] A/69/518, para. 83.

Rome Statute, it is able to file a declaration of acceptance of ICC jurisdiction under article 12(3) of the Rome Statute. In the alternative, the Mission urges the Security Council to refer the situation in Myanmar to the ICC under article 13(b) of the Rome Statute, without delay. This referral should cover the entire territory of Myanmar, with a temporal scope starting from 1 July 2002 (the date of entry into force of the Rome Statute).

1652. The Mission welcomes the ICC Prosecutor's application of 9 April 2018 for a ruling on jurisdiction under article 19(3) of the Rome Statute[3399], and the ICC Pre-Trial Chamber's decision of 6 September 2018 on the matter.[3400] The Pre-Trial Chamber decided that the ICC has jurisdiction over the alleged deportation of Rohingya from Myanmar to Bangladesh on the basis that an essential element of the crime – crossing an international border – occurred on the territory of a State Party (Bangladesh). It emphasized that the same rationale may apply to other crimes within the jurisdiction of the ICC, e.g. the crime against humanity of persecution. While welcoming this decision, the Mission urges the Security Council to refer the situation in Myanmar to the ICC in the terms outlined above, to avoid partial accountability and ensure that all victims in Myanmar benefit from an avenue for justice.

1653. The ICC can only exercise jurisdiction over crimes committed after 1 July 2002, being the date of entry into force of the Rome Statute. Given its resources and mandate, the ICC is only in a position to prosecute those most responsible for the crimes in question; it should not be expected to prosecute a large number of lower-level perpetrators. Moreover, its ability to prosecute higher-level perpetrators necessarily depends on the will of Myanmar or other States to arrest and transfer suspects to the Court. As such, and considering the number of crimes and possible perpetrators, other additional and complementary accountability mechanisms should be considered.

1654. The creation of an *ad hoc* international criminal tribunal for Myanmar is an alternative to (or could complement) a Security Council referral to the ICC. Such tribunal would not be without its challenges, particularly in the absence of cooperation from Myanmar. Again, it would rely on the cooperation of States in arresting and transferring accused persons to the court. However, it would be free from the jurisdictional constraints of the ICC or domestic courts, and its temporal, territorial, personal and subject matter jurisdiction could be shaped to meet the specific context and requirements, including the needs of victims. An international criminal tribunal could also serve as a repository of information and evidence and facilitate other justice initiatives, including domestically. It could be specifically mandated to engage actively in outreach to communities across Myanmar, enabling much-needed awareness raising, participation and education around human rights and justice issues. An *ad hoc* international criminal tribunal for Myanmar would involve a long-term commitment from the international community, including sustained financial and political support.

1655. In the absence of ICC jurisdiction, the Mission therefore strongly encourages the Government of Myanmar to consent to and cooperate in the creation of an *ad hoc* tribunal, to assist in overcoming domestic challenges in ensuring accountability for serious crimes under international law. Should the Myanmar authorities not cooperate, the Mission considers that the Security Council should adopt a Chapter VII resolution to create an ad hoc tribunal without delay.[3401]

1656. Justice mechanisms that mix national and international elements have been created in a number of States. These mechanisms either form part of the country's justice system (e.g. specialised chambers) or constitute a separate legal entity. The creation of such mechanism would ordinarily be initiated by the country concerned, with the assistance of the United Nations or another intergovernmental organization. A formal agreement would then be negotiated, articulating the mechanism's jurisdictional parameters, mandate and authority. Hybrid justice mechanisms benefit from proximity to victims and witnesses, as well as domestic ownership. Operating as part of the national judicial system, yet applying international fair trial standards, they have been credited with capacity building of the local justice sector. At present, however, the Mission considers that the prevailing conditions in Myanmar would serve to undermine the effectiveness of this model. Lack of independence and experience among domestic judges and practitioners would be unlikely to be rectified through exposure to a hybrid environment, at least within a necessarily short period of time. Nor does it currently appear possible to ensure the protection and security of victims and witnesses, officials and staff, against any form of intimidation or reprisal.

[3399] ICC, *Application under Regulation 46(3)*, ICC-RoC46(3)-01/18-1, Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute, 9 April 2018.

[3400] ICC, *Request under Regulation 46(3) of the Regulations of the Court*, ICC-RoC46(3)-01/18-37, Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", 6 September 2018.

[3401] The Mission notes that it has been argued that the General Assembly has the power to create an *ad hoc* international criminal tribunal, should the Security Council fail to act.

1657. In addition to an ICC referral and/or the creation of an *ad hoc* international criminal tribunal for Myanmar, the Mission encourages States to actively pursue investigating and prosecuting crimes committed in Myanmar before their respective domestic courts, under the principle of universal jurisdiction for serious crimes under international law. Many countries require the presence in their territory of the accused or the victim to activate jurisdiction, and complex investigation and prosecution of crimes under international law are costly. Cases before domestic courts of third States are therefore likely to lead to a fragmented or partial form of accountability at best. However, their importance should not be underestimated, especially in a context where there is no international tribunal with jurisdiction to handle cases. Domestic courts exercising universal jurisdiction may also encourage victim communities and serve as an incentive for legal reforms within the country concerned.

1658. States could also explore the creation of an international criminal tribunal through a specific negotiated treaty. Under this model, a number of committed States would pool resources and create a treaty-based mechanism to which they delegate their respective powers based on the principle of universal jurisdiction. This could present a more comprehensive approach to accountability for the crimes in question, should Myanmar not cooperate and should the Security Council decline to act. However, the success and effectiveness of such mechanism would greatly depend on the participation of a large and geographically diverse group of States with a genuine interest in ensuring accountability for victims.

(b) Collection and preservation of evidence; preparation of files for prosecution

1659. Pending the conferral of jurisdiction on the ICC or the establishment of an alternative international accountability mechanism, it will be imperative to immediately collect and preserve evidence and other documentation pertaining to the relevant crimes in compliance with international criminal standards. This will minimise the risk of loss, contamination or destruction of evidence. This should be done through a dedicated interim mechanism, empowered to act until an international tribunal with appropriate jurisdiction is seized of the matter. This mechanism could also be mandated to compile and analyse the information collected and prepare files with a view to support, facilitate and expedite future trials before an international court or any other credible criminal proceedings before domestic courts and tribunals that comply with international fair trial standards.

1660. Such interim mechanism could resemble the "International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011", created by United Nations General Assembly resolution 71/248.[3402] The mechanism could be established by the General Assembly or, alternatively, by the Human Rights Council. It would be critical, however, that it be done quickly and effectively, and with appropriate and sustainable funding. While an interim mechanism for Myanmar would require its own dedicated resources, States could explore the benefits of association with the Syria mechanism to allow for speedy operationalisation and the sharing of administrative and other common facilities.

[3402] Its mandate is: "to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law" (A/RES/71/248, op. 4). Its terms of reference can be found in A/71/755.

(c) Enhanced capacity for continued monitoring, advocacy and technical cooperation

1661. Broader human rights monitoring, advocacy and technical cooperation are essential to maintaining a high level of international engagement and pressure for change in a situation of serious human rights violations and abuses. The Human Rights Council (and its predecessor the Commission on Human Rights) recognised this in decisions to establish and renew the mandate of a Special Rapporteur on the situation of human rights in Myanmar. Judicial and prosecutorial mechanisms are mechanisms for individual criminal responsibility in line with criminal law standards. They do not undertake comprehensive monitoring or public advocacy. The Mission recommends that the mandate of the Special Rapporteur and the monitoring and reporting role of the United Nations High Commissioner for Human Rights in relation to Myanmar be continued. The establishment of an OHCHR country office in Myanmar, with a comprehensive mandate, should continue to be pursued.

1662. At the same time, the Mission sees significant need for enhanced capacity to support monitoring, reporting, advocacy and technical cooperation. Enhanced capacity could take the form of an OHCHR centre or office that gathers and analyses information, at least partly located close to the victims and witnesses and therefore more accessible to them. It could also engage in technical cooperation for the building of national capacity to protect and promote human rights, including in the area of combating impunity, so that eventually monitoring, advocacy and accountability could be increasingly assumed by national institutions when circumstances permit.

1663. The Mission welcomes the enormous interest from a wide range of actors, including States, intergovernmental organizations, United Nations agencies, international and national civil society organizations, academics, journalists and other media professionals, in the situation of the Rohingya and their plight. Countless visits have been made to the refugee camps around Cox's Bazar, often with the explicit goal of documenting the events in Rakhine State and taking statements from refugees for accountability purposes. The need for documentation remains critical. However, the Mission considers that there is also a need for better coordination and a deeper awareness of established methodologies for human rights monitoring and criminal investigations. The repeated interviewing of individual victims, particularly when interviewers lack sufficient training and experience, not only risks duplicating efforts and potentially re-traumatising victims; it may also increase confusion and negatively affect evidence in criminal proceedings.

(d) Increased support for victims

1664. International agencies, national governments and international and national non-governmental organizations are providing victims of human rights violations and abuses in Myanmar with assistance in meeting their physical and medical needs but many needs remain unmet, especially in relation to psychosocial support, in particular for trauma and post-traumatic stress disorder, access to justice, remedies and other advice.

1665. The Mission recommends that a trust fund be established, and generously supported, to meet such needs of victims, including through psychosocial support, livelihood support, legal aid and other services, including to enable them to participate in accountability processes. The trust fund should require all service providers that receive funding to conceive and implement their projects in close consultation with the beneficiaries, and be used to improve coordination to maximize the collective impact of funded projects.

(e) Individual sanctions and an arms embargo

1666. The Mission considers that targeted individual sanctions, including travel bans and asset freezes, could support a reduction in violations of international law, particularly acts amounting to gross human rights violations and serious crimes under international law. They should send a strong message to Myanmar officials who appear most responsible for the violations and crimes outlined in this report. Such targeted individual sanctions should be designed so as to have no effect on the broader Myanmar population. The Mission encourages the Security Council to adopt such sanctions.

1667. Similarly, the Mission is of the view that the Security Council should impose an arms embargo on Myanmar. Regardless of the imposition of a global arms embargo, States should not authorize the transfer of arms to Myanmar, considering the high and overriding risk that such arms would be used to undermine peace and security and in the commission of serious violations of international human rights law and/or serious violations of international humanitarian law, including crimes under international law.

1668. The Mission does not support general economic sanctions on Myanmar. It is concerned that such sanctions in the past may have contributed to the impoverishment of the Myanmar people generally while having little impact on those most responsible for serious human rights violations. The Mission supports continuing efforts to reduce the poverty in which most people in Myanmar live, through increased economic engagement and development assistance, provided that the engagement and assistance is carefully targeted to avoid any benefit to the Tatmadaw generally or to its leaders individually or to others responsible for serious human rights violations.

(f) A short-term mechanism for continuity

1669. The report of the Mission will require immediate follow-up; there must be no gap. Implementation of the various recommendations will take time. Some type of short-term mechanism will be needed to continue gathering, analysing, organizing and archiving evidentiary material, monitoring and reporting on developments, maintaining the networks established by the Mission and ensuring that the international interest and momentum continue.

1670. The Mission has established channels of communication, in a most challenging security context and without access to the country, allowing it to gather and verify information. Through its work and its network of sources, it can immediately follow-up on leads and new allegations. This would be critical in a context of an evolving situation and in preparation of a future accountability mechanism, to ensure that compelling information that could serve in such proceedings is not lost. Until such time as the recommended new interim mechanism is created, a further fact-finding mission should focus on the documentation of, and the collecting and receiving of information regarding continuing human rights violations and abuses, including crimes under international law; the identification of individual and institutional perpetrators and linkages between direct perpetrators and their commanders; and the examination of discriminatory and/or criminal systems underlying patterns of human rights violations and abuses.

XI. Conclusions and recommendations

A. Conclusions

1671. **The Mission concluded on reasonable grounds that gross human rights violations and serious violations of international humanitarian law have been committed in Myanmar since 2011 and that many of these violations undoubtedly amount to the gravest crimes under international law.**

1672. **The gross human rights violations and abuses committed in Kachin, Rakhine and Shan States are shocking for their horrifying nature and ubiquity. They are also shocking because they stem from deep fractures in society and structural problems that have been apparent and unaddressed for decades. They are shocking for the level of denial, normalcy and impunity that is attached to them. The Mission concludes that these abusive patterns are reflective of the situation in Myanmar as a whole.**

1673. **Myanmar has a heavy responsibility to remedy the situation as a matter of the utmost urgency, or risk destroying its democratic reform process. The international community also bears responsibility and must take a united stand to both condemn the violations and assist Myanmar in addressing the root causes of its recurrent problems. This begins by ensuring that the perpetrators of crimes are held to account, and by giving hope to victims of a future without the fear and insecurity that have characterized their existence.**

1674. **The steps required to address the human rights crises in Myanmar are well known. For nearly three decades, five consecutive Special Rapporteurs on the situation of human rights in Myanmar have presented annual reports to the General Assembly and the Human Rights Council, with detailed recommendations to all stakeholders. Similarly, the United Nations High Commissioner for Human Rights has formulated concrete recommendations, as have many international and national civil society organizations. The Advisory Commission on Rakhine State also presented a detailed report. These recommendations should be implemented immediately.**

1675. **The actions of the Tatmadaw in Kachin, Rakhine and Shan States, in particular in the context of the "clearance operations" in northern Rakhine State in 2016 and 2017, have so seriously violated international law that any engagement in any form with the Tatmadaw, its current leadership, and its businesses, is indefensible. Engagement should only be considered when (1) a complete restructuring of the Tatmadaw is commenced, (2) its current leadership is replaced, and (3) extensive reform is undertaken to place the Tatmadaw under full elected civilian control and oversight and to remove the Tatmadaw from Myanmar's political and economic life.**

1676. **The half century of continuous conflict between the Tatmadaw and Myanmar's ethnic minorities, with its serious violations of international law, has made it abundantly clear that peace is impossible without a negotiated national political settlement that recognises the legitimate aspirations of all Myanmar's ethnic minorities. Without such a settlement, Myanmar is destined to repeat its cycles of violence and serious human rights violations. The future of Myanmar as a nation can only be assured through peace, justice, true democracy and sustainable development. The international community has an obligation to support Myanmar in achieving that.**

1677. **Considering the unwillingness of the Government of Myanmar to cooperate with the Mission, it requests the United Nations Secretary-General to transmit the Mission's report to the President of the Republic of the Union of Myanmar, drawing the attention of the President and the Government, including the civilian authorities and the Tatmadaw, to the report's recommendations. It requests the Secretary-General to seek a formal response from the President to the report's conclusions and recommendations.**

B. Recommendations

1. To the Government of Myanmar

1678. **The Government of Myanmar, including the civilian authorities and the Tatmadaw as relevant, should act without delay to re-structure the Tatmadaw and transform its role. That should begin with replacing the current leadership of the Tatmadaw. Through a constitutional amendment process, the Government should further pursue the removal of the Tatmadaw from Myanmar's political life**

1679. **The Government of Myanmar, including the civilian authorities and the Tatmadaw as relevant, should further act with the greatest sense of urgency to:**

(a) halt all current military and security operations that are unlawful, unnecessary or disproportionate, especially where they target civilians or take insufficient precaution to safeguard their wellbeing;

(b) cease the perpetration of sexual and gender-based violence by Myanmar security forces against women, girls, men and boys, as well as the unlawful or

arbitrary detention of women and children, and release them; put in place and effectively enforce a zero-tolerance policy on sexual and gender-based violence;

(c) acknowledge the role of the Tatmadaw and other security forces in the perpetration of gross human rights violations, including sexual and gender-based violence and grave violations against children;

(d) issue clear, public and unequivocal instructions to all branches of the Tatmadaw and other security forces that torture, rape, sexual violence, grave violations against children and other human rights violations are prohibited absolutely; order all security forces to comply with international human rights law and international humanitarian law, as applicable;

(e) permit and facilitate free and unfettered access to all parts of Myanmar, especially Kachin, Rakhine and Shan States and all other conflict or crisis areas, for national and international humanitarian actors to provide relief and for journalists and national and international human rights monitors to investigate and report on human rights compliance;

(f) cooperate with the international community, in particular the United Nations, in the establishment of an international accountability mechanism to pursue justice for the victims of serious crimes under international law in Myanmar;

(g) end all harassment and prosecution of human rights defenders, lawyers, journalists, peace campaigners, democracy activists and other members of civil society, for the peaceful exercise of their rights to freedom of expression, association and assembly, including by releasing and pardoning all political prisoners; pardon and release the Reuters journalists Wa Lone and Kyaw Soe Oo;

(h) unequivocally condemn and end intolerant, divisive and discriminatory rhetoric based on ethnic, racial or religious grounds, both from State actors and non-State actors, and actively promote an inclusive national vision based on the equal respect and protection of human rights;

(i) suspend the citizenship verification process based on the 1982 Citizenship Law; acknowledge the arbitrary deprivation of nationality of the Rohingya community and restore their citizenship rights through a speedy administrative process developed through meaningful consultation with the Rohingya community;

(j) ensure that the repatriation of Rohingya and other refugees is safe, dignified and voluntary, in accordance with international standards; that adequate human rights protections are in place; that Rohingya refugees are expressly permitted to return to their places of origin, providing reparation for losses sustained and support in rebuilding their lives, that Rohingya are consulted on decisions about their future; and that the best interests of the child are the primary consideration with respect to children, particularly unaccompanied minors;

(k) remove from Rakhine State all divisions, battalions and units of security forces responsible for perpetrating violations of international law before starting the repatriation of refugees, not allowing them any role in the repatriation process or the provision of security to returnees;

(l) allow for international human rights monitors on the ground, to observe and advise on ways to ensure the human rights compliance of the repatriation process, including the resettlement and reintegration of the Rohingya, and to respect, protect and fulfil the human rights of all communities in Rakhine State;

(m) ensure that any infrastructure plans for Rakhine State do not frustrate the safe and sustainable return of Rohingya to their places of origin; accordingly, suspend all terrain clearance in and around villages formerly occupied by Rohingya; only resume activities after (1) consultation with and approval of the original residents; and (2) prior examination by forensic, human rights and criminal experts.

1680. **In parallel, the Government of Myanmar, including the civilian authorities and the Tatmadaw as relevant, should immediately commence a coordinated and genuine effort to address the root causes of the recurrent cycles of violence and associated human rights violations and atrocity crimes. Doing so will require action in the following areas:**

Human rights compliance

1681. **The Government of Myanmar, including the civilian authorities and the Tatmadaw as relevant, should act immediately to ensure full compliance with international human rights law and international humanitarian law where applicable. It should:**

(a) ensure the enjoyment of human rights for all, based on full equality and regardless of citizenship or "national race" status; to that effect, replace the concept of citizenship based on "national race" with a citizenship regime based on objective, non-discriminatory criteria; ensure that all individuals in Myanmar have appropriate documentation of their legal identity, including birth registration and proof of citizenship; allow all individuals, including Rohingya, to self-identify in line with international human rights standards;

(b) dismantle the systems of oppression and discrimination of ethnic and religious minorities, with an urgent focus on the situation of the Rohingya; review, amend or repeal all laws, orders, policies and practices, at all levels of government, that are discriminatory in nature or effect, including for example the Protection of Race and Religion Laws; consequently, immediately lift all restrictions on movement, access to livelihood, food, humanitarian assistance, education and health services for the Rohingya in Rakhine State; ensure that announcement 88/2018 issued by the Union Government on 13 August 2018 and the abolishment of eight local orders targeting the Rohingya is immediately and consistently implemented;

(c) review, repeal or revise all policies, tactics, rules of engagement and training of the Tatmadaw and other security forces to ensure their full compliance with international human rights law and international humanitarian law, in particular the principle of non-discrimination and equal protection of all civilians regardless of race, religion or nationality; ensure that security forces receive regular, repeated and mandatory training on human rights, the protection of civilians, the prohibition of torture and sexual and gender-based violence, underscoring the principles of command responsibility for such acts;

(d) comply as a matter of priority with its obligations, under both national and international law, to promote and protect the rights of children, with particular regard to its obligations under the Convention on the Rights of the Child; address all six grave violations against children in armed conflict, seeking cooperation with non-State armed groups operating within Myanmar to ensure full protection of children;

(e) strengthen the independence, powers and capacity of the Myanmar National Human Rights Commission, in accordance with the Paris Principles on national human rights institutions;

(f) ratify all international human rights treaties not yet ratified, including the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and their optional complaints procedures;

(g) engage and fully cooperate with international human rights mechanisms, including the United Nations Special Rapporteur on the situation of human rights in Myanmar, who should be permitted to resume regular monitoring visits, with free and unfettered access to all parts of Myanmar and with guarantees of non-reprisal; seek advice and support from the United Nations Office of the High Commissioner for Human rights, including through the establishment of a country office in Myanmar with a comprehensive mandate.

Accountability

1682. **The Government of Myanmar, including the civilian authorities and the Tatmadaw as relevant, should act, without delay, to end impunity and ensure full accountability for violations of international human rights law, international humanitarian law, and serious crimes under international law. It should:**

(a) pursue all credible allegations of human rights violations and abuses and crimes under international law through prompt, effective and thorough, independent and impartial investigations, bringing perpetrators to account in line with international human rights norms and standards; include a specific focus on the investigation, prosecution and punishment of direct perpetrators and their superiors for acts of sexual and gender-based violence and grave violations against children;

(b) ratify the Rome Statute of the International Criminal Court and accept the jurisdiction of the Court as of its entry into force (1 July 2002);

(c) reform the domestic judicial sector by strengthening the independence of judges and the qualifications and expertise of judges, prosecutors and lawyers;

(d) transfer to civilian courts jurisdiction over all military and other security personnel alleged to have violated international human rights law, international humanitarian law, or committed crimes under international law, in particular violations against civilians;

(e) incorporate into domestic law criminal sanctions for serious crimes under international law, as well as other serious human rights violations or violations of international humanitarian law;

(f) develop and implement a comprehensive action plan towards accountability for human rights violations in Myanmar, including redress for victims;

(g) prohibit amnesties and pardons for alleged perpetrators of serious crimes under international law and other serious human rights violations;

(h) report publicly on the status of all military personnel convicted of offences against civilians, providing details about the offence, the sentence received, the sentence implemented, and any pardon that may have been given.

(i) adopt a comprehensive policy and package of measures regarding the fulfilment of the right to reparation of victims of serious human rights violations.

Access to medical and psychosocial support and other services

1683. **The Government of Myanmar, including the civilian authorities and the Tatmadaw as relevant, should act, without delay, to ensure that victims of serious human rights violations and abuses have adequate access to medical, psychosocial and other support and services. It should:**

(a) ensure that survivors of sexual violence have unrestricted access to free, confidential medical support, including psychological and psychosocial support or mental healthcare as needed; integrate such support into broader long-term social care and support provided by the State to vulnerable persons;

(b) ensure effective access of all children, including associate, naturalised and non-citizen children, to all essential public services, including education and healthcare; have particular regard for those children who have lost their primary carers in conflict and those children who are born as a result of rape by Myanmar security forces; provide psychological support and mental health assistance to children affected by conflict as a priority.

Search for the missing and disappeared

1684. **The Government of Myanmar, in collaboration with the International Committee of the Red Cross (ICRC) and with the assistance of the Government of Bangladesh, should seek to identify persons killed or missing as a result of the events**

in northern Rakhine State since October 2016 and to assist persons, especially children, separated from family members to locate relatives. The Government of Myanmar, including the Tatmadaw, should make household registration photographs and data available to the ICRC for these purposes. Other organizations, including Rohingya community-based organizations, should be supported to develop a comprehensive, accurate and reliable assessment of casualties, in line with a clearly established methodology, for use by any future accountability mechanisms.

1685. **The Government of Myanmar should immediately establish a procedure whereby individuals can report disappearances, ensuring that reports are investigated independently from the Tatmadaw, the victim is traced, and any perpetrators held to account.**

Combating hate speech

1686. **The Government of Myanmar, including the civilian authorities and the Tatmadaw as relevant, should immediately take credible action to combat hate speech, in particular where it amounts to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. It must:**

(a) act swiftly to end all intolerant, divisive or discriminatory public commentary that reinforces hate speech and false narratives, especially those targeting Rohingya and Muslims in general;

(b) develop and implement a public communication strategy focused on countering hate speech and false narratives and the fostering of an enabling, inclusive and tolerant environment in which the human rights of all are respected; involve all relevant stakeholders in its development, including Rohingya and other Muslim groups;

(c) dismiss and otherwise hold accountable public officials, whether serving in the Government or military, found to be spreading hate speech or false narratives, in particular where it amounts to the incitement to violence, hostility or discrimination;

(d) develop a comprehensive policy and action plan, in line with Human Rights Council resolution 16/18, on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, and also based on race, ethnicity and nationality; ensure that the policy and action plan are developed through a transparent and inclusive consultation with all relevant civil society organizations and other stakeholders, including Rohingya and other Muslim groups; ensure that the policy and plan include implementation of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence;

(e) design and implement a curriculum for nationwide human rights education at all levels, especially in schools; ensure that such curriculum promotes tolerance and respect among Myanmar's ethnic and religious communities, including the Rohingya; and teaches about the dangers of hate speech and incitement to hostility, discrimination and violence;

(f) ensure that all relevant legislation to combat hate speech including the proposed Bill for Protection against Hate Speech, is consistent with the narrow conditions for restrictions on freedom of expression under international human rights law;

Democratisation

1687. **The Government of Myanmar, including its executive and legislative arms, should undertake full democratic reform of the Myanmar constitutional and political system. It should:**

(a) revise the constitution to ensure consistency with democratic rights and freedoms and the protection of all human rights for all people of Myanmar; fully protect and respect the rights to freedom of expression, association and peaceful assembly; widen the space for civil society activity and respect and protect the work of human rights defenders;

(b) encourage and accept public scrutiny and criticism of Government action; legislate for freedom of access to government information to enable greater scrutiny of government activity, in line with international standards; establish independent State institutions to monitor and oversee the government, to ensure accountability to the public and to deal with the grievances of people in Myanmar in relation to administrative decision making and actions;

(c) allow free and unfettered access to all parts of Myanmar for journalists, national and international human rights monitors, diplomats and United Nations officials.

1688. **In view of the great fragility of Myanmar's transition to democracy, the Government of Myanmar should take urgent action to support the basic means of democratic activity and the work of democratic actors. It should:**

(a) repeal or amend provisions in laws unduly restricting the interrelated rights to freedom of opinion and expression, association, and peaceful assembly, including sections 143-147, 499-502 and 505(b) of the Penal Code, the Official Secrets Act, section 66(d) of the Telecommunications Act, and section 17(1) of the Unlawful Associations Act;

(b) pending legislative amendments to end criminal defamation, stop government officials from making criminal defamation complaints, including under section 66(d) of the Telecommunications Act;

(c) issue clear public statements welcoming public scrutiny of government performance and, in particular, publicly recognising the important role of independent media and journalists in holding the government to account for its actions, including in conflict areas.

1689. **The Government of Myanmar should provide that all persons eligible to vote in the 2010 general election, and their children who have turned 18 since then, are eligible to vote in the 2020 general election. Member States and organizations, including the United Nations, should make this a key consideration in, and integral to, the provision of support to the Government of Myanmar in the organization of elections.**

Security sector reform

1690. **The Government of Myanmar, including the civilian authorities and the Tatmadaw as relevant, should immediately undertake significant security sector reform. It should:**

(a) abolish the quota for military seats in the legislature, the authority of the Tatmadaw to appoint vice-presidents and ministers and the military's control over certain ministries;

(b) place the security sector, including the Tatmadaw, fully under civilian control and oversight;

(c) abolish the Commander-in-Chief's role in relation to military justice;

(d) require parliamentary approval for the appointment of the Commander-in-Chief;

(e) require the National Defence and Security Council to have a clear majority of members who are not and have not been military officers and specify the functions and responsibilities of the National Defence and Security Council;

(f) require parliamentary approval of all funding for the Tatmadaw and prohibit any income for the Tatmadaw that is not under parliamentary control; consequently, remove the Tatmadaw from Myanmar's economic life, prohibiting it by law from engaging in any form of economic activity and prohibiting serving Tatmadaw officers from having a controlling interest in any economic ventures.

1691. **An independent and impartial system of military justice should be established by law to deal with disciplinary matters. Conduct amounting to alleged violations of international human rights law, international humanitarian law, or international crimes should be tried in the civilian judicial system. This system of military justice should be independent from the Commander-in-Chief. There should be a process of appeal from the military courts to a civilian appeals court.**

1692. **An independent, external body should be established to receive, investigate and determine complaints and allegations, from civilians or from members of the Tatmadaw or other security forces, of wrongdoing by them without fear of reprisals.**

1693. **The Police should be re-established as a professional civilian entity independent of the Tatmadaw with responsibility for the maintenance of law and order internally in Myanmar. The Directorate of People's Militia and Border Forces should similarly be removed from the Tatmadaw structure and placed under civilian authority. The law should clearly define and distinguish between military responsibilities and police responsibilities and prescribe the conditions under which the Tatmadaw may take action instead of or alongside the police.**

1694. **The Tatmadaw should adopt rules of engagement that require it to protect and safeguard civilian life and property and ensure the humane treatment of opponents, in line with international law. Military strategies that entail the targeting of civilians or their property, should be prohibited. All military and other security forces' policies, rules of engagement and training should be reviewed and revised to ensure full consistency with international human rights law and international humanitarian law obligations. They should be published and disseminated widely.**

1695. **Military and police personnel should be subject to stringent human rights vetting. All current security sector personnel should be vetted to ensure that anyone who is subject of credible allegations of serious human rights violations is, at minimum, removed from positions of authority and is not eligible for promotion or for appointment to a civil service position or to an international representative role. All prospective security sector personnel should be subject to human rights vetting as part of the recruitment process.**

1696. **No Tatmadaw or other security forces personnel should be eligible for a United Nations peacekeeping or policing role until and unless the Tatmadaw and other security forces are re-structured, vetted and transformed in accordance with these recommendations.**

1697. **Military and police personnel should be trained in international human rights law and international humanitarian law, in particular in relation to the treatment and protection of civilians; police training should focus on civilian police functions, including community policing and crime prevention and investigation. It should include specific training modules on the use of force in compliance with international human rights norms and standards, including in the context of the management of protests and demonstrations. All military and police training manuals should be public documents to promote accountability and transparency.**

1698. **The Tatmadaw must end the systemic practice of forced labour. Any persons currently held for forced labour should be released immediately and returned safely to their homes.**

2. To the United Nations and the international community

1699. **The international community, through the United Nations, should use all diplomatic, humanitarian and other peaceful means to assist Myanmar in meeting its responsibility to protect its people from genocide, crimes against humanity and war**

crimes. It should take collective action in accordance with the United Nations Charter, as necessary.

1700. **The Security Council should ensure accountability for crimes under international law committed in Myanmar, preferably by referring the situation to the International Criminal Court or alternatively by creating an ad hoc international criminal tribunal. Further, the Security Council should adopt targeted individual sanctions, including travel bans and asset freezes, against those who appear most responsible for serious crimes under international law. It should also impose an arms embargo on Myanmar.**

1701. **Until the Security Council acts, the General Assembly, or alternatively the Human Rights Council, should create an independent, impartial mechanism to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files to facilitate and expedite fair and independent criminal proceedings in national, regional or international courts or tribunals.**

1702. **The Human Rights Council should continue to support the mandates of the Special Rapporteur on Myanmar and the High Commissioner for Human Rights, and ensure they have adequate resources to maintain a strong focus on the human rights crisis in Myanmar.**

1703. **The Human Rights Council should specifically request OHCHR to focus on ensuring accountability for human rights violations and abuses in Myanmar, including by enhanced monitoring, documentation, analysis and public reporting on the human rights situation; raising awareness among civil society and other actors engaged in documenting human rights violations about relevant international standards; working with victim communities to raise awareness about justice options; and supporting comprehensive rule of law and security sector reform in Myanmar in line with international human rights norms and standards. Appropriate resources must be allocated.**

1704. **The Human Rights Council should establish a second fact-finding mission for a limited period to build on the work undertaken by the Mission, until either one of the mechanisms outlined in paragraph 1700 or 1701 are operational, or the reinforced work of OHCHR set out in paragraph 1703, is in place.**

1705. **The United Nations should urgently adopt a common strategy to ensure that all engagement with Myanmar takes into account, and addresses, human rights concerns, in line with the Human Rights Up Front Action Plan. This should guide all United Nations engagement in Myanmar, particularly in relation to Rakhine State, and include policies and public advocacy stances. All United Nations support to Myanmar authorities should undergo a full Human Rights Due Diligence analysis.**

1706. **As a matter of urgency, there must be a comprehensive, independent inquiry into the United Nation's involvement in Myanmar since 2011, with a view to establishing whether everything possible to prevent or mitigate the unfolding crises was done; identifying lessons learned and good practice; making recommendations as appropriate, including on accountability; and enabling more effective work in future.**

1707. **The United Nations and international community must ensure that the repatriation of refugees and return of internally displaced persons only occurs when safe, voluntary and dignified, with explicit human rights protections in place, including citizenship. In the current circumstances, returns are not possible.**

1708. **All Member States should ensure that engagement with Myanmar, and support for aid, development and reform projects, take into account and address human rights concerns, and explicitly conform to the principles of non-discrimination and equality. They should ensure that humanitarian organizations working on Myanmar are appropriately funded. States should cease operational support to the Tatmadaw and other security forces until there is (1) demonstrable commitment to genuine reform, (2) international assistance in implementing reform and (3) acceptance of and**

cooperation with international mechanisms to hold those responsible accountable for crimes under international law.

1709. **Regardless of the imposition of an arms embargo by the Security Council, States should not authorize the transfer of arms to Myanmar, considering the overriding risk that they would be used to undermine peace and security and in the commission of serious crimes under international law.**

1710. **Relevant regional organizations, including the European Union and ASEAN, should develop strategies to ensure accountability for perpetrators of crimes under international law in Myanmar, including through sustained engagement with Myanmar and support for an international justice mechanism.**

1711. **Member States should exercise jurisdiction to investigate and prosecute alleged perpetrators of serious crimes under international law committed in Myanmar.**

1712. **The United Nations should establish a trust fund for victim support, through which victims can receive psychosocial support, legal aid, livelihood support, and others means of assistance. All trust fund projects should be designed in consultation with victims.**

3. To non-State armed groups in Myanmar

1713. **All non-State armed groups active in Myanmar, including "ethnic armed organizations" and the Arakan Rohingya Salvation Army, should:**

(a) order their members to comply fully with international humanitarian law, in particular to protect civilians and to respect the human rights of all individuals within their control or areas of operation;

(b) fully cooperate with any credible effort to hold perpetrators of serious human rights violations and abuses, as well as crimes under international law, accountable, including by non-State actors;

(c) respond positively and speedily to any initiative by the Government of Myanmar, including the Tatmadaw, to halt military operations, either temporarily or permanently, with a view to declaring a full ceasefire;

(d) participate in good faith in negotiations with the Government of Myanmar to develop a comprehensive resolution of conflict within the framework of an inclusive, pluralistic, democratic nation that respects the human rights of all people.

4. To Myanmar civil society, including religious leaders and organizations

1714. **Myanmar civil society organizations should play a leadership role in promoting an inclusive, pluralistic, democratic Myanmar in which the human rights of all are fully respected, protected and fulfilled. They should work jointly and with the Government to present a positive vision of Myanmar's future and to address and oppose action and speech that incites hatred, violence and discrimination. They should participate in Government initiatives, such as the development and implementation of a policy and action plan on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on ethnicity, race, nationality or religion or belief.**

1715. **Religious leaders and organizations should lead initiatives for interfaith and intercommunal dialogue and confidence-building. Buddhist, Muslim and Christian leaders and communities, including the Rohingya, should all be involved in interfaith dialogue initiatives with respect for each other. They should model and demonstrate good interfaith and intercommunal relations based on mutual respect and acceptance.**

5. To businesses enterprises operating in Myanmar

Business and human rights

1716. **All business enterprises active in Myanmar or trading with or investing in businesses in Myanmar should demonstrably ensure that their operations are compliant with the United Nations Guiding Principles on Business and Human Rights. They should respect human rights, avoiding infringing on the human rights of others and addressing the adverse human rights impacts with which they are involved. They should have:**

(a) a policy commitment to meet their responsibility to respect human rights;

(b) a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;

(c) processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

1717. **No business enterprise active in Myanmar or trading with or investing in businesses in Myanmar should enter into an economic or financial relationship with the security forces of Myanmar, in particular the Tatmadaw, or any enterprise owned or controlled by them or their individual members, until and unless they are re-structured and transformed as recommended by the Mission.**

Facebook and other social media

1718. **All social media platforms active in Myanmar, including messenger systems, should apply international human rights law as basis for content moderation on their platforms. In doing so, they should respect the rights of their users to freedom of expression and to privacy. The Basic Principles on Business and Human Rights provides a baseline approach that companies should adopt. They should engage with the Office of the United Nations High Commissioner for Human Rights and existing human rights mechanisms, in particular the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.**

1719. **Facebook and other social media platforms, including messenger systems, should support the existing research of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on online content moderation. The Mission encourages the Special Rapporteur to explore further the responsibilities of social media companies as carriers of expression that incites violence or discrimination based on race, ethnicity, nationality or religion.**

1720. **Facebook and other social media platforms, including messenger systems, should allow for an independent and thorough examination of the use of their platform to spread messages inciting to violence and discrimination in Myanmar. The extent to which posts and messages on its platform have led to real-world discrimination and violence should be part of such examination. Their experience in Myanmar should be examined as a situation of great concern in itself and as a case study for their global operations.**

1721. **All social media platforms active in Myanmar, including messenger systems, should open themselves up to public accountability and transparency. They should actively track the use of their platform in Myanmar for the spread and promotion of threats and the incitement to violence, hostility and discrimination. They should be transparent about their policies and practices to identify and remove objectionable content. They should publicly release disaggregated data regularly, including the number and type of content violations, the platform used, number of complaints received and average processing time, number of content removals, number of accounts or pages taken down or suspended.**

1722. **All social media platforms active in Myanmar, including messenger systems, should enhance their capacity to combat the use of their platforms for the spread and**

promotion of threats and the incitement to violence, hostility and discrimination. This includes hiring sufficient content moderators who are familiar with the context, background and nuances of Myanmar language and the issue of hate speech in the country, and providing them with training on human rights standards.

1723. **All social media platforms active in Myanmar, including messenger systems, should retain indefinitely copies of material removed for use by judicial bodies and other credible accountability mechanisms addressing serious human rights violations committed in Myanmar in line with international human rights norms and standards, including where such violations amounted to crimes under international law.**

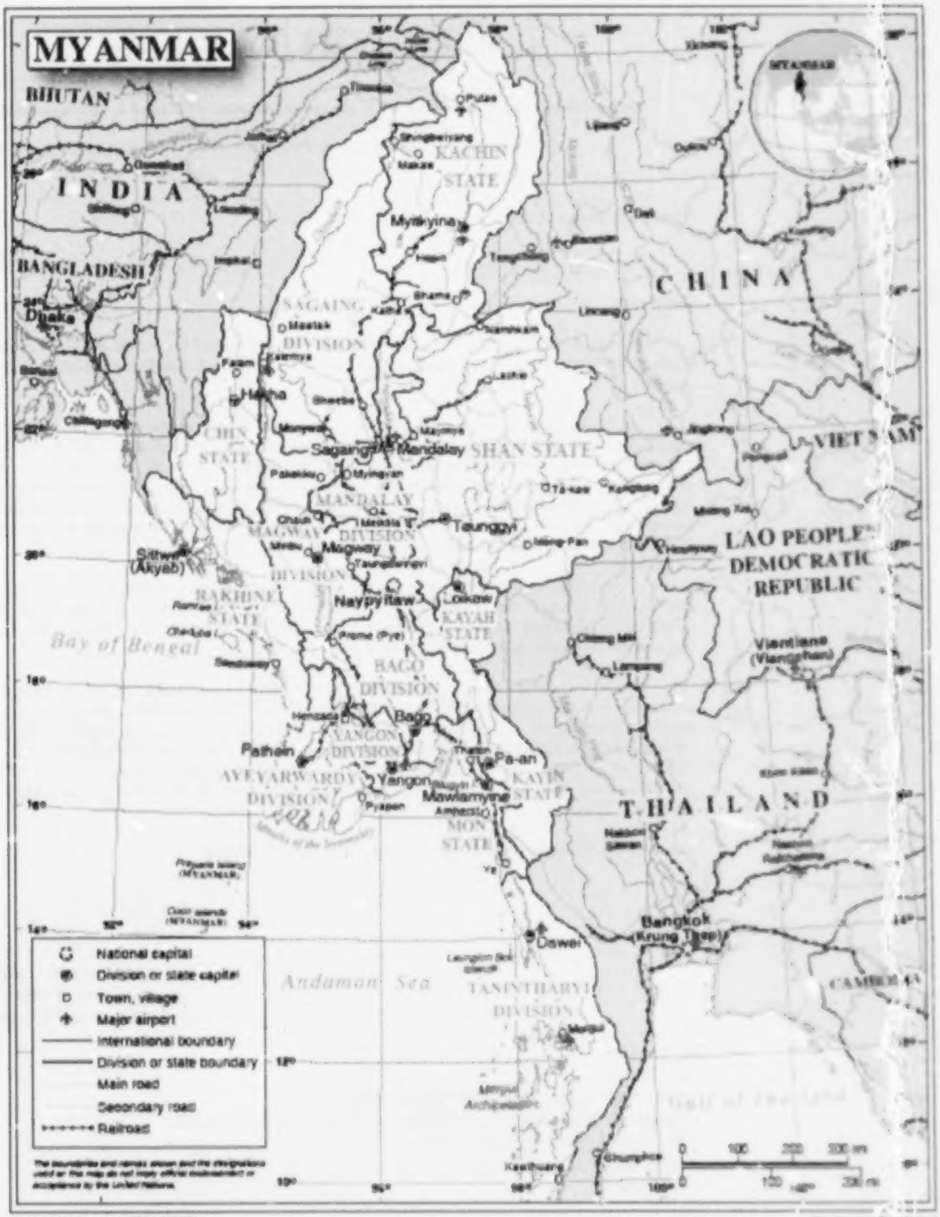
1724. **All social media platforms active in Myanmar, including messenger systems, should establish early warning systems for emergency escalation, involving all relevant stakeholders. All death threats and threats of harm in Myanmar should be treated as serious and immediately removed when detected. The early warning systems should be developed and operated transparently and in consultation with key stakeholders, including civil society organizations. It should be supported by a formal stakeholder group to provide advice and to monitor performance.**

1725. **All social media platforms active in Myanmar, including messenger systems, should actively assist efforts to promote tolerance, peace and the human rights of all the Myanmar people. They should ensure access of all Myanmar users to credible sources of information and alternative views, including by reviewing their advertising models to ensure that they do not adversely affect diversity of opinion and ideas. They should assist users to distinguish verified, credible news from disinformation, particularly on matters of high public interest or carrying a high risk of violence, including by cooperating with initiatives that offer fact-checking services to users.**

1726. **Before entering any new market, particularly those with volatile ethnic, religious or other social tensions, Facebook and other social media platforms, including messenger systems, should conduct in-depth human rights impact assessments for their products, policies and operations, based on the national context and take mitigating measures to reduce risks as much as possible.**

Annexes

I. Map of Myanmar

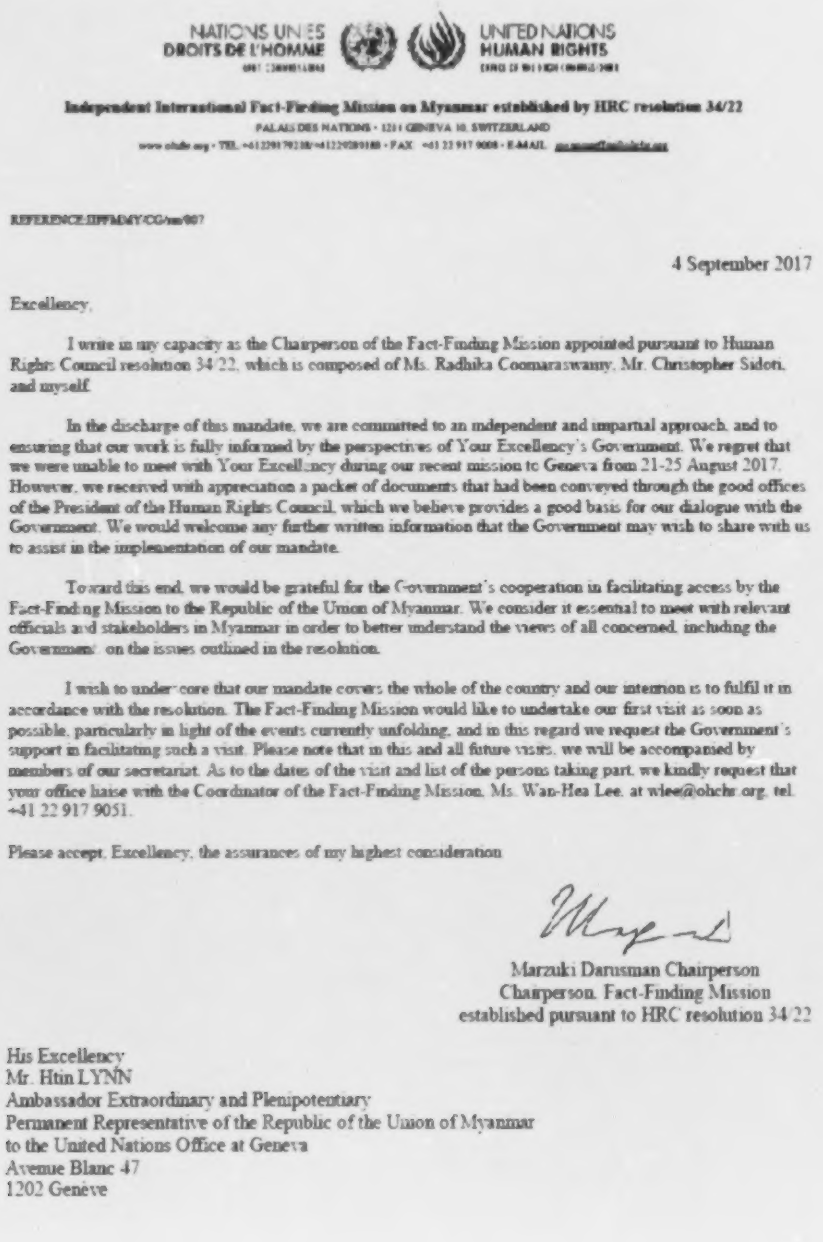

MYANMAR
BHUTAN
INDIA
BANGLADESH
Dhaka
CHINA
VIET NAM
LAO PEOPLE'S DEMOCRATIC REPUBLIC
THAILAND
CAMBODIA
KACHIN STATE
SAGAING DIVISION
CHIN STATE
SHAN STATE
MANDALAY DIVISION
MAGWAY DIVISION
RAKHINE STATE
KAYAH STATE
BAGO DIVISION
YANGON DIVISION
AYEYARWARDY DIVISION
KAYIN STATE
MON STATE
TANINTHARYI DIVISION
Myitkyina
Hakha
Sagaing
Mandalay
Taunggyi
Magway
Sittwe (Akyab)
Nay Pyi Taw
Loikaw
Bago
Pathein
Yangon
Pa-an
Mawlamyine
Dawei
Vientiane (Viangchan)
Bangkok (Krung Thep)
Bay of Bengal
Andaman Sea
National capital
Division or state capital
Town, village
Major airport
International boundary
Division or state boundary
Main road
Secondary road
Railroad
0 100 200 300 km
0 100 200 mi

Map No. 4168 Rev. 3 UNITED NATIONS
June 2012

Department of Field Support
Cartographic Section

II. Correspondence with the Government of the Republic of the Union of Myanmar

1. Letter sent to the Permanent Mission of the Republic of the Union of Myanmar on 4 September 2017



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PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL. [illegible] • FAX +41 22 917 9008 • E-MAIL: [illegible]

REFERENCE:IIFFMMY/CG/sm/007

4 September 2017

Excellency,

I write in my capacity as the Chairperson of the Fact-Finding Mission appointed pursuant to Human Rights Council resolution 34/22, which is composed of Ms. Radhika Coomaraswamy, Mr. Christopher Sidoti, and myself.

In the discharge of this mandate, we are committed to an independent and impartial approach, and to ensuring that our work is fully informed by the perspectives of Your Excellency's Government. We regret that we were unable to meet with Your Excellency during our recent mission to Geneva from 21-25 August 2017. However, we received with appreciation a packet of documents that had been conveyed through the good offices of the President of the Human Rights Council, which we believe provides a good basis for our dialogue with the Government. We would welcome any further written information that the Government may wish to share with us to assist in the implementation of our mandate.

Toward this end, we would be grateful for the Government's cooperation in facilitating access by the Fact-Finding Mission to the Republic of the Union of Myanmar. We consider it essential to meet with relevant officials and stakeholders in Myanmar in order to better understand the views of all concerned, including the Government, on the issues outlined in the resolution.

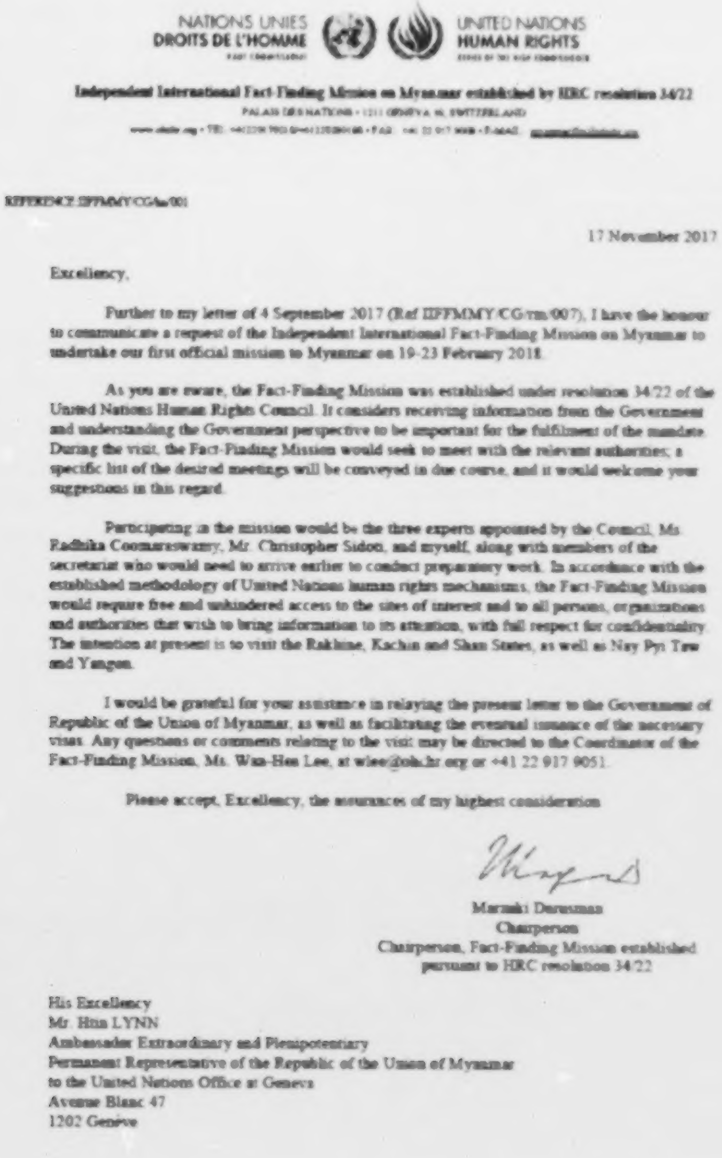
I wish to underscore that our mandate covers the whole of the country and our intention is to fulfil it in accordance with the resolution. The Fact-Finding Mission would like to undertake our first visit as soon as possible, particularly in light of the events currently unfolding, and in this regard we request the Government's support in facilitating such a visit. Please note that in this and all future visits, we will be accompanied by members of our secretariat. As to the dates of the visit and list of the persons taking part, we kindly request that your office liaise with the Coordinator of the Fact-Finding Mission, Ms. Wan-Hea Lee, at wlee@ohchr.org, tel. +41 22 917 9051.

Please accept, Excellency, the assurances of my highest consideration.

Marzuki Darusman Chairperson
Chairperson, Fact-Finding Mission
established pursuant to HRC resolution 34/22

His Excellency
Mr. Htin LYNN
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of the Republic of the Union of Myanmar
to the United Nations Office at Geneva
Avenue Blanc 47
1202 Genève

2. Letter sent to the Permanent Mission of the Republic of the Union of Myanmar on 17 November 2017



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REFERENCE: IIFFMMY/CG/hs/001

17 November 2017

Excellency,

Further to my letter of 4 September 2017 (Ref IIFFMMY/CG/rm/007), I have the honour to communicate a request of the Independent International Fact-Finding Mission on Myanmar to undertake our first official mission to Myanmar on 19-23 February 2018.

As you are aware, the Fact-Finding Mission was established under resolution 34/22 of the United Nations Human Rights Council. It considers receiving information from the Government and understanding the Government perspective to be important for the fulfilment of the mandate. During the visit, the Fact-Finding Mission would seek to meet with the relevant authorities; a specific list of the desired meetings will be conveyed in due course, and it would welcome your suggestions in this regard.

Participating in the mission would be the three experts appointed by the Council, Ms Radhika Coomaraswamy, Mr. Christopher Sidoti, and myself, along with members of the secretariat who would need to arrive earlier to conduct preparatory work. In accordance with the established methodology of United Nations human rights mechanisms, the Fact-Finding Mission would require free and unhindered access to the sites of interest and to all persons, organizations and authorities that wish to bring information to its attention, with full respect for confidentiality. The intention at present is to visit the Rakhine, Kachin and Shan States, as well as Nay Pyi Taw and Yangon.

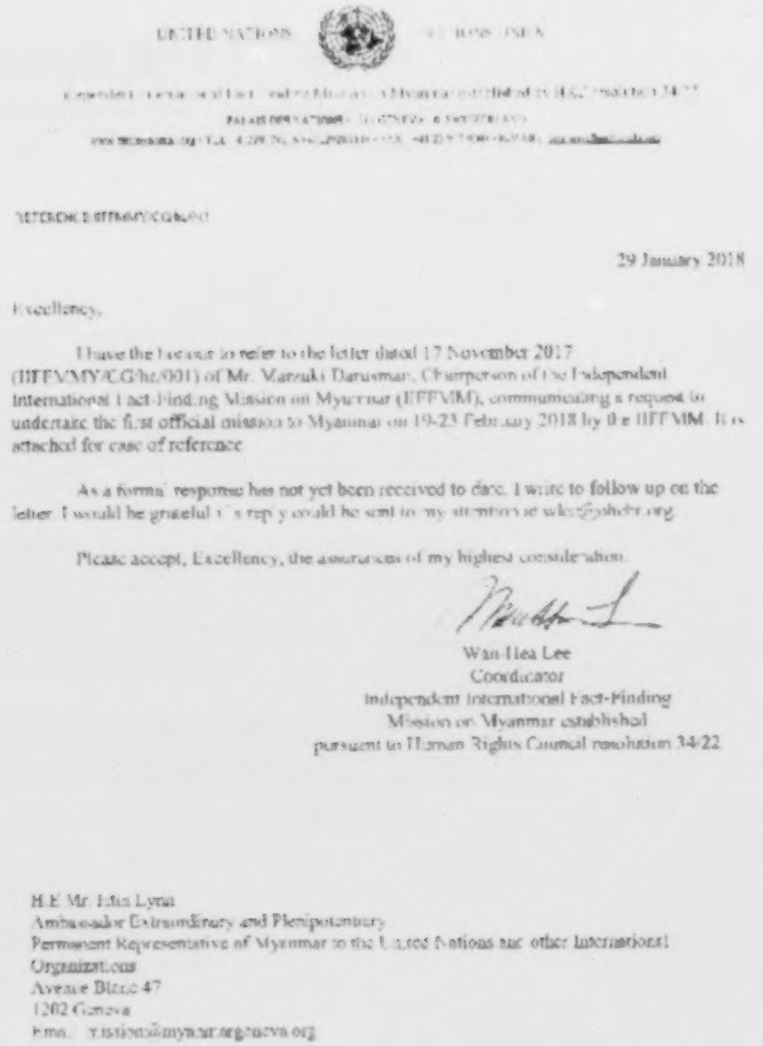
I would be grateful for your assistance in relaying the present letter to the Government of Republic of the Union of Myanmar, as well as facilitating the eventual issuance of the necessary visas. Any questions or comments relating to the visit may be directed to the Coordinator of the Fact-Finding Mission, Ms. Wan-Hea Lee, at wlee@ohchr.org or +41 22 917 9051.

Please accept, Excellency, the assurances of my highest consideration.

Marzuki Darusman
Chairperson
Chairperson, Fact-Finding Mission established pursuant to HRC resolution 34/22

His Excellency
Mr. Htin LYNN
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of the Republic of the Union of Myanmar
to the United Nations Office at Geneva
Avenue Blanc 47
1202 Genève

3. Letter sent to the Permanent Mission of the Republic of the Union of Myanmar on 29 January 2018



UNITED NATIONS NATIONS UNIES

29 January 2018

Excellency,

I have the honour to refer to the letter dated 17 November 2017 (IIFFMMY/CG/hc/001) of Mr. Marzuki Darusman, Chairperson of the Independent International Fact-Finding Mission on Myanmar (IIFFMM), communicating a request to undertake the first official mission to Myanmar on 19-23 February 2018 by the IIFFMM. It is attached for ease of reference.

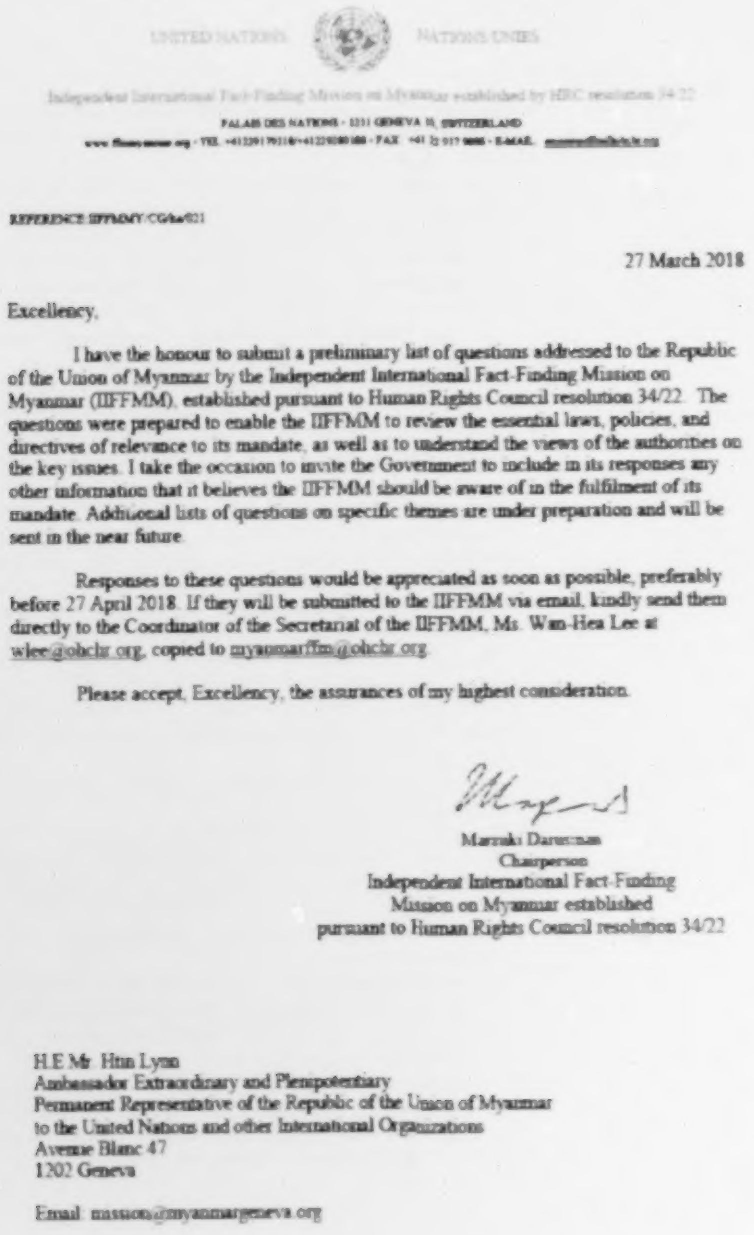
As a formal response has not yet been received to date, I write to follow up on the letter. I would be grateful if a reply could be sent to my attention at wlee@ohchr.org.

Please accept, Excellency, the assurances of my highest consideration.

Wan-Hea Lee
Coordinator
Independent International Fact-Finding
Mission on Myanmar established
pursuant to Human Rights Council resolution 34/22

H.E. Mr. Htin Lynn
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Myanmar to the United Nations and other International
Organizations
Avenue Blanc 47
1202 Geneva
Email: mission@myanmargeneva.org

4. Letter and questions sent to the Permanent Mission of the Republic of the Union of Myanmar on 27 March 2018



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REFERENCE: IIFFMMY/CG/[illegible]/021

27 March 2018

Excellency,

I have the honour to submit a preliminary list of questions addressed to the Republic of the Union of Myanmar by the Independent International Fact-Finding Mission on Myanmar (IIFFMM), established pursuant to Human Rights Council resolution 34/22. The questions were prepared to enable the IIFFMM to review the essential laws, policies, and directives of relevance to its mandate, as well as to understand the views of the authorities on the key issues. I take the occasion to invite the Government to include in its responses any other information that it believes the IIFFMM should be aware of in the fulfilment of its mandate. Additional lists of questions on specific themes are under preparation and will be sent in the near future.

Responses to these questions would be appreciated as soon as possible, preferably before 27 April 2018. If they will be submitted to the IIFFMM via email, kindly send them directly to the Coordinator of the Secretariat of the IIFFMM, Ms. Wan-Hea Lee at wlee@ohchr.org, copied to myanmarffm@ohchr.org.

Please accept, Excellency, the assurances of my highest consideration.

Marzuki Darusman
Chairperson
Independent International Fact-Finding
Mission on Myanmar established
pursuant to Human Rights Council resolution 34/22

H.E. Mr. Htin Lynn
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of the Republic of the Union of Myanmar
to the United Nations and other International Organizations
Avenue Blanc 47
1202 Geneva

Email: mission@myanmargeneva.org

List of questions to Myanmar I
27 March 2018

- **Intelligence and threat assessment of the Government and military of Myanmar with regard to the situation in Rakhine state and elsewhere in the country, in particular Kachin and Shan states**

1. Please provide information regarding the Government's threat assessment that underlies the security operations in Rakhine state (since 2011), as well as in Kachin and Shan states (since 2011). What are the objectives of the operations?
2. Please provide information about the armed groups/insurgencies that the Government is facing, in particular in Rakhine, Kachin and Shan states since 2011 (Arakan Rohingya Salvation Army - ARSA, Arakan Army, KIA, RCSS, TNLA, SSPP, MNDAA-Kokang, etc.). Please include details regarding their origins, structure, organization, command, capacity, unit strength, funding, weaponry, etc.
3. What is the status of the peace process, and what explains the military offensives in Kachin and Shan states when the government is prioritising the peace process?
4. Please provide information on the losses suffered by the Myanmar security forces (military, police, etc.) as a result of actions from armed groups/insurgencies?

- **Legal framework for the security operations in Myanmar since 2011**

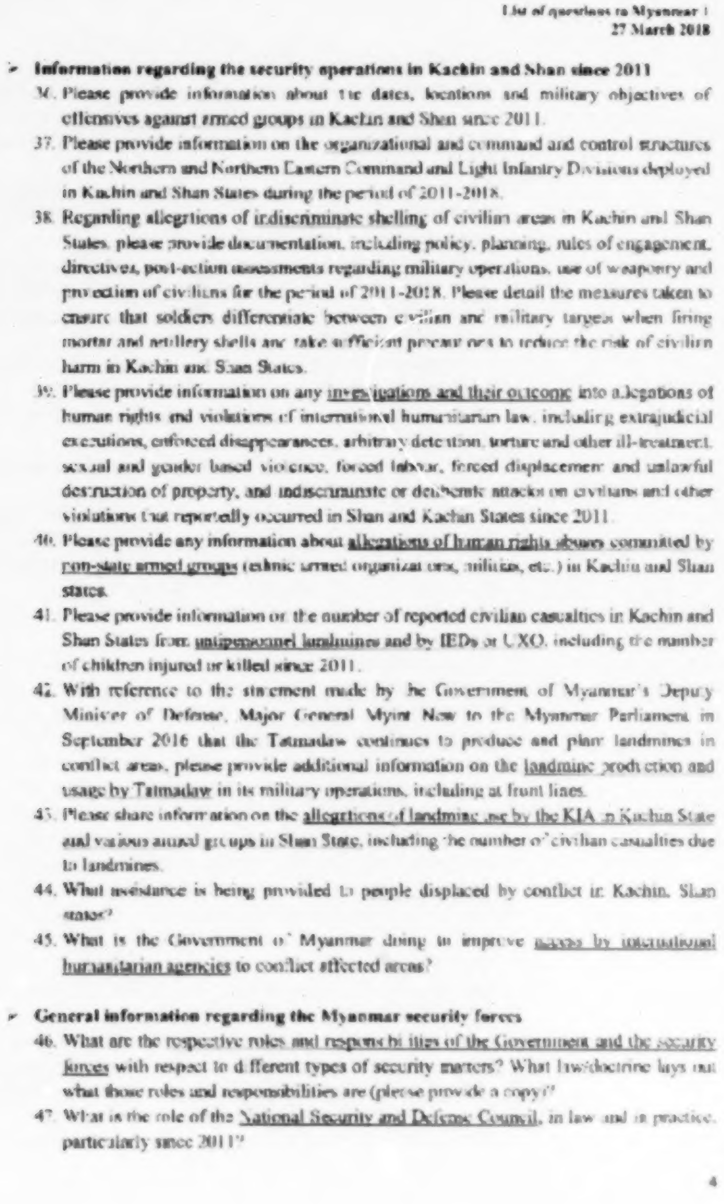
5. What is the legal basis and framework for the security operations that have been undertaken in Rakhine, Kachin and Shan states since 2011, including "clearance operations"? What is the legal basis and meaning of the term "clearance operations"?
6. Which situations in Myanmar are considered to amount to an "armed conflict" where international humanitarian law is applicable? Can the underlying analysis be shared?
7. What is the legal basis and significance of designating the ARSA a "terrorist organisation" and what is the underlying analysis leading to the use of the label "extremist terrorists" to describe members of ARSA and others? Is any other armed group or insurgency in Myanmar designated a "terrorist organisation"? Please share a copy of the formal decision(s).
8. What is the legal basis and significance of designating parts of Rakhine state as a "military operations area"?
9. What is the legal basis for the harvesting of crops by the State in Maungdaw, Buthidaung and Rathedaung Townships, as well as for the bulldozing/flattening of villages in these areas (including the removal of trees, buildings, roads, etc.) and the reported construction of security posts or military bases on lands formerly owned or occupied by villagers who self identify as Rohingya (and are called Muslims in Rakhine by the Government)?
    a. Please also share a copy of the plans and policies for the reconstruction and land management of Maungdaw, Buthidaung and Rathedaung Township following the "clearance operations" of August-September 2017, including under the Natural Disaster Management Law
    b. Please also indicate which steps have been taken to protect possible crime scenes and preserve evidence of crimes committed in Maungdaw, Buthidaung and Rathedaung Township, in the context of the ARSA attacks of 25 August 2017 and the following clearance operations.

c. Please indicate whether any land in Maungdaw, Buthidaung and Rathedaung Township has been put to new use or seen a transfer of ownership since 25 August 2017.

➢ **Information regarding the security operations in Rakhine since 2011**

10. Please provide information about the alleged ARSA attacks on or around 9 October 2016, on or around 25 August 2017, and on or around 5 January 2018 against Myanmar security posts/forces (military, border guard, police, etc.), including information on location of attacks, targets, nature and extent of the attacks, parties to the attacks, numbers of people involved, weapons used, fatalities sustained (among ARSA members, Myanmar security forces personnel, villagers, and other categories), etc.
11. Please provide information about any clashes between the Arakan Army and the Myanmar security forces in Rakhine state (and/or Chin state) since 2011, including information on the location of attacks or clashes, targets, nature and extent of the attacks/clashes, numbers of soldiers and fighters involved, casualties suffered, and the impact on the civilian population.
12. Please provide information on the build-up of military capacity in Rakhine since 2016 and the underlying threat assessment and operational goals, with a specific focus on July-August 2017.
13. Please provide information on the specific units involved in the security operations since 2012 (including around 9 October 2016 and 25 August 2017), including relevant commanding officers and command structures.
14. Have Light Infantry Divisions been brought into Rakhine, if so, which ones, at what dates, and for what purpose?
15. Please provide information about the objectives of the security forces' operations in Rakhine state (and specifically for October-December 2016 and August-October 2017)?
16. Please provide a copy of the Rules of Engagement, Directives, and Code of Conduct applicable to the security forces during the security operations in Rakhine state since 2011.
17. Did the security forces use aircraft (airplanes, helicopters) during security operations in Rakhine since 2011? If so, for what purpose?
18. Please provide information on the reported existence of Rakhine militias and self-defence groups, and the involvement of the Government or military in providing weaponry and training to such groups. What is the Government's and military's policy regarding the role and use of militias? How are militias held accountable for their actions?
19. Please provide the numbers of people arrested, detained, and prosecuted after the violence in 2012 in Rakhine state and the charges applied. Please provide information on whether they are still detained, the lengths of detention, and the status of their files.
20. Please provide the numbers of people arrested, detained, and prosecuted in relation to insurgent activity, and in particular in relation to the October 2016 and August 2017 attacks, in Rakhine state. Please provide information on whether they are still detained, the lengths of detention, and the status of their files.

21. Please provide any information the Myanmar authorities may have regarding human rights abuses committed by non-state armed groups/insurgencies in Rakhine.
22. Please share detailed information about any investigations or enquiries the Myanmar authorities have conducted into allegations of human rights violations and abuses committed in Rakhine since 2011 (full report and underlying materials).
23. Please share the Government's views and analysis on how the application of the 1982 Citizenship Law affected the Rohingya community, in particular those who had citizenship and documentation prior to 1982 and their descendants.
24. Please provide an update on the National Verification Card and citizenship verification processes, including where they are occurring and their timeframe.
25. Please confirm or deny the existence and status of the "SPDC Rohingya Extermination Plan", reportedly adopted in 1988? Please share any information regarding this Plan, in terms of who drafted it, who adopted it, and to what extent its implementation was monitored? Please share a copy of the Plan if it exists.
26. Please confirm the status of the "Rakhine State Action Plan" dealing with the Rohingya population. Please share further information regarding this Plan, in terms of who drafted it, who adopted it, and to what extent its implementation was monitored? Please share a copy.
27. Please share the Government's views on and analysis of the violence in Rakhine state in June and October 2012.
28. Please share the administrative organigramme at the township and the village levels in Rakhine. What changes have been made at the administrative level since 2011?
29. Please share information regarding the use of landmines in Rakhine, including in the context of the security operations, and demining efforts.
30. During operations, what steps did the Myanmar government or military take to prevent the destruction of villages or to protect villagers? Where they failed, why did they fail? Where they succeeded, what was done differently?
31. How many people were displaced within Rakhine state following the violence on 25 August 2017? Are they still displaced? What support is provided to them?
32. Please provide information about the reported plans to close the camps for people in Rakhine state displaced since the 2012 violence. Where will people be resettled?
33. Please provide information regarding the status and outcome of any investigations into the reported police shooting in Mrauk-U in January 2018. Please provide an update on the case against Aye Maung.
34. What is the current population of Maungdaw, Buthidaung and Rathedaung Townships, in terms of the total numbers, ethnicity and religion? What was the population of these Townships in 2011, broken down by the same criteria?
35. Please outline the number of model villages (also known as "Natala" villages) built in Maungdaw, Buthidaung and Rathedaung townships since 1990 and their current locations (i.e. village name and village tract name); please indicate the population in each village, broken down by ethnicity and religion; please indicate any on-going and future plans for additional model villages in Rakhine State, and specify who is intended to occupy each village, broken down by ethnicity and religion.



List of questions to Myanmar I
27 March 2018

- **Information regarding the security operations in Kachin and Shan since 2011**

36. Please provide information about the dates, locations and military objectives of offensives against armed groups in Kachin and Shan since 2011.
37. Please provide information on the organizational and command and control structures of the Northern and Northern Eastern Command and Light Infantry Divisions deployed in Kachin and Shan States during the period of 2011-2018.
38. Regarding allegations of indiscriminate shelling of civilian areas in Kachin and Shan States, please provide documentation, including policy, planning, rules of engagement, directives, post-action assessments regarding military operations, use of weaponry and protection of civilians for the period of 2011-2018. Please detail the measures taken to ensure that soldiers differentiate between civilian and military targets when firing mortar and artillery shells and take sufficient precautions to reduce the risk of civilian harm in Kachin and Shan States.
39. Please provide information on any investigations and their outcome into allegations of human rights and violations of international humanitarian law, including extrajudicial executions, enforced disappearances, arbitrary detention, torture and other ill-treatment, sexual and gender based violence, forced labour, forced displacement and unlawful destruction of property, and indiscriminate or deliberate attacks on civilians and other violations that reportedly occurred in Shan and Kachin States since 2011.
40. Please provide any information about allegations of human rights abuses committed by non-state armed groups (ethnic armed organizations, militias, etc.) in Kachin and Shan states.
41. Please provide information on the number of reported civilian casualties in Kachin and Shan States from antipersonnel landmines and by IEDs or UXO, including the number of children injured or killed since 2011.
42. With reference to the statement made by the Government of Myanmar's Deputy Minister of Defense, Major General Myint Nwe to the Myanmar Parliament in September 2016 that the Tatmadaw continues to produce and plant landmines in conflict areas, please provide additional information on the landmine production and usage by Tatmadaw in its military operations, including at front lines.
43. Please share information on the allegations of landmine use by the KIA in Kachin State and various armed groups in Shan State, including the number of civilian casualties due to landmines.
44. What assistance is being provided to people displaced by conflict in Kachin, Shan states?
45. What is the Government of Myanmar doing to improve access by international humanitarian agencies to conflict affected areas?

- **General information regarding the Myanmar security forces**

46. What are the respective roles and responsibilities of the Government and the security forces with respect to different types of security matters? What law/doctrine lays out what those roles and responsibilities are (please provide a copy)?
47. What is the role of the National Security and Defense Council, in law and in practice, particularly since 2011?

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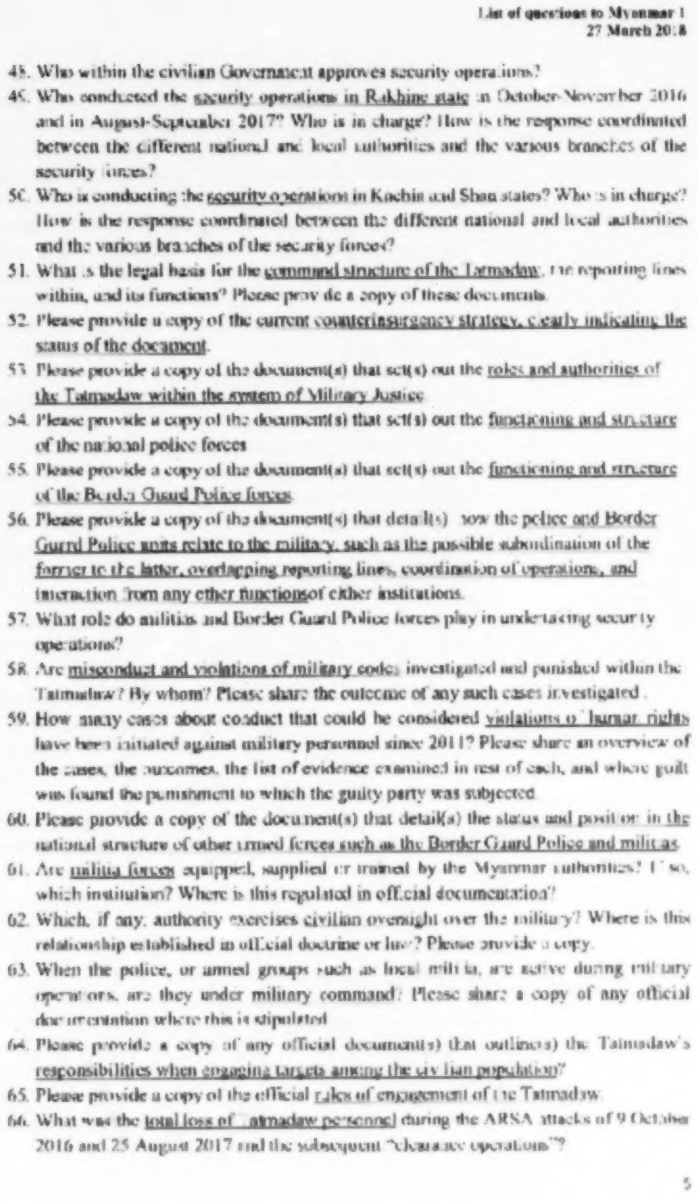


List of questions to Myanmar 1
27 March 2018

48. Who within the civilian Government approves security operations?
49. Who conducted the security operations in Rakhine state in October-November 2016 and in August-September 2017? Who is in charge? How is the response coordinated between the different national and local authorities and the various branches of the security forces?
50. Who is conducting the security operations in Kachin and Shan states? Who is in charge? How is the response coordinated between the different national and local authorities and the various branches of the security forces?
51. What is the legal basis for the command structure of the Tatmadaw, the reporting lines within, and its functions? Please provide a copy of these documents.
52. Please provide a copy of the current counterinsurgency strategy, clearly indicating the status of the document.
53. Please provide a copy of the document(s) that set(s) out the roles and authorities of the Tatmadaw within the system of Military Justice
54. Please provide a copy of the document(s) that set(s) out the functioning and structure of the national police forces
55. Please provide a copy of the document(s) that set(s) out the functioning and structure of the Border Guard Police forces.
56. Please provide a copy of the document(s) that detail(s) how the police and Border Guard Police units relate to the military, such as the possible subordination of the former to the latter, overlapping reporting lines, coordination of operations, and interaction from any other functionsof either institutions.
57. What role do militias and Border Guard Police forces play in undertaking security operations?
58. Are misconduct and violations of military codes investigated and punished within the Tatmadaw? By whom? Please share the outcome of any such cases investigated.
59. How many cases about conduct that could be considered violations of human rights have been initiated against military personnel since 2011? Please share an overview of the cases, the outcomes, the list of evidence examined in rest of each, and where guilt was found the punishment to which the guilty party was subjected
60. Please provide a copy of the document(s) that detail(s) the status and position in the national structure of other armed forces such as the Border Guard Police and militias.
61. Are militia forces equipped, supplied or trained by the Myanmar authorities? If so, which institution? Where is this regulated in official documentation?
62. Which, if any, authority exercises civilian oversight over the military? Where is this relationship established in official doctrine or law? Please provide a copy.
63. When the police, or armed groups such as local militia, are active during military operations, are they under military command? Please share a copy of any official documentation where this is stipulated
64. Please provide a copy of any official document(s) that outline(s) the Tatmadaw's responsibilities when engaging targets among the civilian population?
65. Please provide a copy of the official rules of engagement of the Tatmadaw
66. What was the total loss of Tatmadaw personnel during the ARSA attacks of 9 October 2016 and 25 August 2017 and the subsequent "clearance operations"?

5

67. What was the total loss of enemy fighters in the course of the security operations following the 9 October 2016 and 25 August 2017 attacks?
68. What was the total loss of Tatmadaw personnel and of Arakan Army fighters during clashes between the Tatmadaw and the Arakan Army since 2011?

➢ **Steps taken by the Government to deescalate the situation and plans to address the root causes of the recurrent security threats**

69. What steps have the Myanmar Government and security forces taken to deescalate or stop the violence in Rakhine (in 2012, 2016 and 2017)?
70. How does the Government of Myanmar see the human rights situation evolving in Rakhine, Kachin and Shan states?
71. What does the Government view as the root causes of the recurrent security threats, and how does it ensure that they are adequately addressed?
72. What steps have been taken to reconcile different ethnic and religious communities?
73. How will the return of those who fled Myanmar into Bangladesh be arranged, and how will the Government ensure that the rights of those concerned are fully respected?

➢ **Guarantees and safeguards for the protection of human rights, including during security operations**

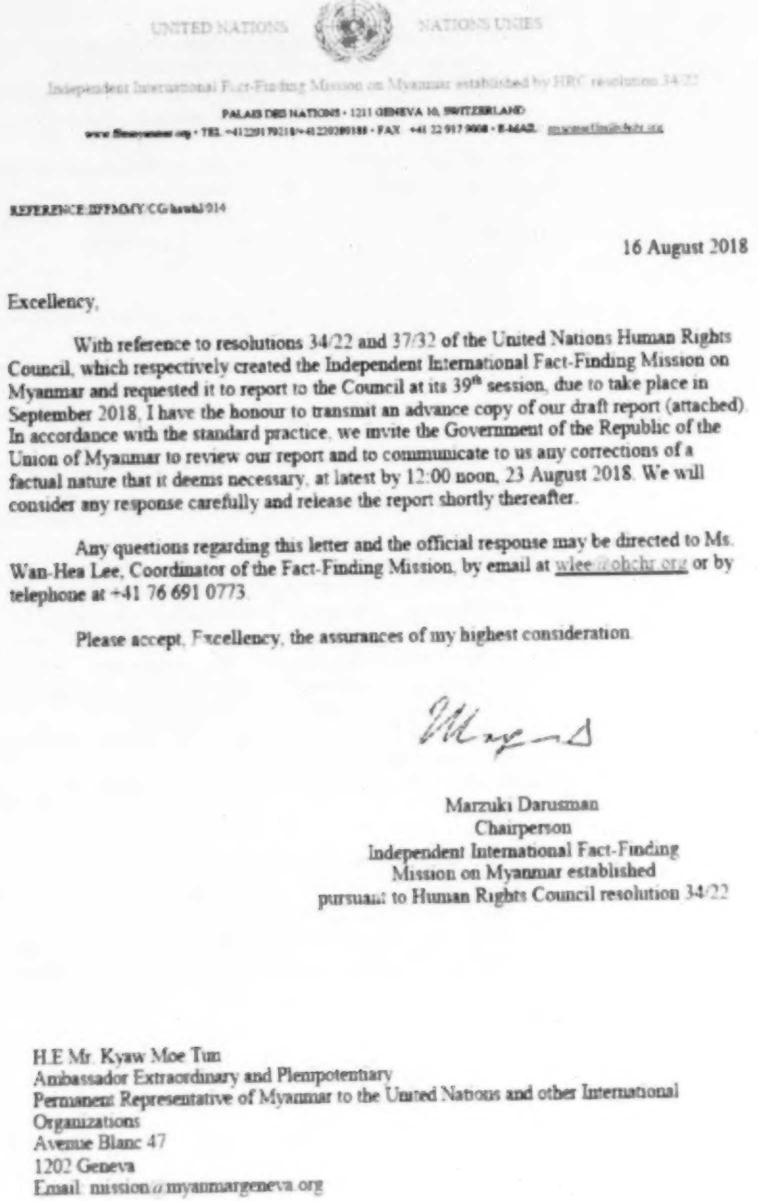
74. How does the Government of Myanmar ensure that human rights are protected in the course of the security operations (in particular in Rakhine, Kachin and Shan)?
75. Is the Government aware of any human rights violations or abuses committed in the context of the security operations (in particular in Rakhine, Kachin and Shan)?
76. How does the Government of Myanmar address allegations of human rights violations and abuses committed by security forces or other actors (in particular in Rakhine, Kachin and Shan)? Please provide specific information.
77. How does the Government of Myanmar ensure accountability for human rights violations and abuses committed in Myanmar?
78. How does the Government of Myanmar ensure that victims of human rights violations and abuses obtain adequate redress?
79. Please provide an update on developments regarding judicial reform and capacity building.

➢ **Hate speech and incitement to hatred and violence**

80. Please share the Government's plans, policies and steps taken to curb hate speech and incitement to hatred or violence in the country, in particular on social media.
81. Please provide detailed information regarding any law enforcement or judicial actions regarding cases of hate speech or incitement to hatred or violence.

[END]

5. Letter sent to the Permanent Mission of the Republic of the Union of Myanmar on 16 August 2018



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Independent International Fact-Finding Mission on Myanmar established by HRC resolution 34/22

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16 August 2018

Excellency,

With reference to resolutions 34/22 and 37/32 of the United Nations Human Rights Council, which respectively created the Independent International Fact-Finding Mission on Myanmar and requested it to report to the Council at its 39th session, due to take place in September 2018, I have the honour to transmit an advance copy of our draft report (attached). In accordance with the standard practice, we invite the Government of the Republic of the Union of Myanmar to review our report and to communicate to us any corrections of a factual nature that it deems necessary, at latest by 12:00 noon, 23 August 2018. We will consider any response carefully and release the report shortly thereafter.

Any questions regarding this letter and the official response may be directed to Ms. Wan-Hea Lee, Coordinator of the Fact-Finding Mission, by email at wlee@ohchr.org or by telephone at +41 76 691 0773.

Please accept, Excellency, the assurances of my highest consideration.

Marzuki Darusman
Chairperson
Independent International Fact-Finding
Mission on Myanmar established
pursuant to Human Rights Council resolution 34/22

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